

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3
4 UNITED STATES OF AMERICA,)
5 Plaintiff,)
6 vs.)
7 MICHAEL J. MISKE, JR.,)
8 Defendant.)
 CRIMINAL NO. 19-00099-DKW
 Honolulu, Hawaii
 April 1, 2024
 TESTIMONY OF THERESA
 SCHUBERT AND LAURENCE
 MILLER

9
10 PARTIAL TRANSCRIPT OF JURY TRIAL (DAY 40)
11 BEFORE THE HONORABLE DERRICK K. WATSON,
12 CHIEF UNITED STATES DISTRICT COURT JUDGE

13 APPEARANCES:

14 For the Plaintiff: MARK INCIONG, ESQ.
15 MICHAEL DAVID NAMMAR, ESQ.
16 WILLIAM KE AUPUNI AKINA, ESQ.
 AISLINN AFFINITO, ESQ.
 Office of the United States Attorney
 PJKK Federal Building
 300 Ala Moana Boulevard, Suite 6100
 Honolulu, Hawaii 96850

17 For the Defendant: LYNN E. PANAGAKOS, ESQ.
18 841 Bishop St., Ste 2201
 Honolulu, HI 96813
19 MICHAEL JEROME KENNEDY, ESQ.
20 Law Offices of Michael Jerome
21 Kennedy, PLLC
 333 Flint Street
 Reno, NV 89501

22 Official Court Reporter: Gloria T. Bediamol, RPR RMR CRR FCRR
23 United States District Court
 300 Ala Moana Boulevard
 Honolulu, Hawaii 96850

24
25 Proceedings recorded by machine shorthand, transcript produced
 with computer-aided transcription (CAT).

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08:39AM 2 THE CLERK: Criminal Number 19-00099-DKW-KJM, United

08:39AM 3 States of America versus Michael J. Miske, Jr.

08:39AM 4 This case has been called for jury trial, day 40.

08:39AM 5 Counsel, please make your appearances for the record.

08:39AM 6 MR. INCIONG: Good morning, Your Honor. Mark Inciong,

08:39AM 7 Michael Nammar and KeAupuni Akina for the United States along

08:39AM 8 with FBI Special Agent Thomas Palmer and Kari Sherman. Good

08:39AM 9 morning.

08:39AM 10 THE COURT: Good morning.

08:39AM 11 MR. KENNEDY: Good morning, Your Honor. Michael

08:39AM 12 Kennedy here with Lynn Panagakos, Michael Miske, Ashley King

08:39AM 13 and Josh Barry. And good morning to everyone.

08:39AM 14 THE COURT: Good morning. The entire team is here.

08:39AM 15 MR. KENNEDY: We are.

08:39AM 16 THE COURT: 16 jurors good morning to you. You may be

08:39AM 17 seated by the way, Counsel. Welcome back. Hopefully everyone

08:40AM 18 did what I asked you to do on the two weeks ago Friday, which

08:40AM 19 was to recharge the batteries. Hopefully you all have had a

08:40AM 20 chance to do that. We've got a few extra days in fact more

08:40AM 21 than what we had all contemplated. So we have had even more of

08:40AM 22 an opportunity to do what I just suggested.

08:40AM 23 We are ready to go hopefully this morning. The

08:40AM 24 government is prepared, I assume, to continue its case in

08:40AM 25 chief.

08:40AM 1 Mr. Inciong, your next witness please.

08:40AM 2 MR. INCIONG: We are, Your Honor. Before we call our
08:40AM 3 witness, Your Honor, could we please publish an exhibit Your
08:40AM 4 Honor ruled on after the jury left us?

08:40AM 5 THE COURT: Those two pages from the grand jury
08:40AM 6 transcript?

08:40AM 7 MR. INCIONG: Correct.

08:40AM 8 THE COURT: Yes, you may.

08:40AM 9 MR. INCIONG: 4-138A.

08:40AM 10 THE COURT: You may. And since we're on the subject
08:40AM 11 of just kind of clean-up here and housekeeping, there were some
08:40AM 12 objections filed to some of the witnesses that I gather the
08:40AM 13 government intends to call this morning, since we have not yet
08:40AM 14 heard argument on that, I asked the government to hold off on
08:41AM 15 calling any of those individuals until after our first morning
08:41AM 16 break, and I will take argument, if there is any, at that time.

08:41AM 17 Mr. Inciong, go ahead. You may publish.

08:41AM 18 MR. INCIONG: Thank you, Your Honor. We would like to
08:41AM 19 publish 4-138A which is an excerpt of the January 3, 2013, HPD
08:41AM 20 interview of Michael Galmiche. If we could enlarge the first
08:41AM 21 top half to allow the jury to read that. Thank you.

08:42AM 22 Could we show the second half, the bottom half of that
08:42AM 23 page please, then could we go to to the second page all the way
08:42AM 24 from the top please? Thank you.

08:43AM 25 Finally, could we show the bottom half of the second

08:43AM 1 page please?

08:43AM 2 Thank you, Your Honor. The United States calls

08:43AM 3 Theresa Schubert.

08:44AM 4 THE CLERK: Please raise your right hand.

08:44AM 5 THERESA SCHUBERT,

08:44AM 6 called as a witness, having been first duly sworn, was examined

08:44AM 7 and testified as follows:

08:44AM 8 THE CLERK: Please state your full name for the record

08:44AM 9 spelling your last name for the record.

08:44AM 10 THE WITNESS: Theresa Schubert, T-H-E-R-E-S-A,

08:44AM 11 S-C-H-U-B-E-R-T.

08:44AM 12 DIRECT EXAMINATION

08:44AM 13 BY MR. INCIONG:

08:44AM 14 Q Good morning, Ms. Schubert.

08:44AM 15 A Good morning.

08:44AM 16 Q How old are you, ma'am?

08:44AM 17 A I'm 52 years old.

08:44AM 18 Q Did you grow up here on the island of Oahu?

08:44AM 19 A Yes, I did.

08:45AM 20 Q What high school did you go to?

08:45AM 21 A I attended Radford High School.

08:45AM 22 Q What do you for employment currently?

08:45AM 23 A I am a high school teacher for over now 29 years.

08:45AM 24 Q Which high school do you teach at?

08:45AM 25 A I teach at Farrington High School.

08:45AM 1 Q Is there a certain subject that you cover?

08:45AM 2 A I am the student activities coordinator, so I oversee
08:45AM 3 student government, all the counsels, the clubs on campus as
08:45AM 4 well as I teach leadership training two classes a day.

08:45AM 5 Q So are you employed then by the department of education
08:45AM 6 technically?

08:45AM 7 A That is correct.

08:45AM 8 Q Have you had other employment with the Department of
08:45AM 9 Education prior to becoming a teacher at Farrington?

08:45AM 10 A No.

08:45AM 11 Q And you're still doing that currently today, correct?

08:45AM 12 A Yes. I've been there for 25 years.

08:45AM 13 Q Are you one of the so many teachers that we hear about
08:45AM 14 that have second jobs to supplement their income?

08:46AM 15 A Yes.

08:46AM 16 Q What is your -- what is your side hustle so to speak?

08:46AM 17 A I do event coordination for different promoters who hire
08:46AM 18 me to run their event operations which includes ticketing,
08:46AM 19 cashiering, muscle and maintenance. Any I -- actually,
08:46AM 20 anything I could do, anything that's even related.

08:46AM 21 Q What do you mean by muscle and maintenance?

08:46AM 22 A If they need a crew to that needs the help carry ice for
08:46AM 23 the venders or help build out a stage or truss and lighting or
08:46AM 24 platforms or tents. And then maintenance they become the same
08:46AM 25 crew to make sure that the event is safe of debris or any

08:46AM 1 hazardous materials they'll dispose it throughout the night.

08:46AM 2 Q Are you employed by a certain company in that regard or

08:46AM 3 are you an independent contractor?

08:46AM 4 A I'm independent.

08:46AM 5 Q How long have you been doing that -- that sort of work on

08:46AM 6 the side for?

08:46AM 7 A 17 years now.

08:47AM 8 Q Are you involved with any other organizations, nonprofit

08:47AM 9 organizations?

08:47AM 10 A Yes. I am the current president of Women Speaking Out

08:47AM 11 Hawaii which is a nonprofit. We're a platform as to educate

08:47AM 12 our youth of Hawaii against domestic violence and so we teach

08:47AM 13 free workshops twice a year for high school, middle school and

08:47AM 14 young college students.

08:47AM 15 Q So you work with children a lot or at least high school

08:47AM 16 students a lot it sounds like?

08:47AM 17 A Yes.

08:47AM 18 Q Do you have children of your own?

08:47AM 19 A I do.

08:47AM 20 Q How many?

08:47AM 21 A I have five children.

08:47AM 22 Q So I want to take you back to December of 2012,

08:47AM 23 Ms. Schubert. Were you working as a teacher at Farrington High

08:47AM 24 School at any time?

08:47AM 25 A Yes, I was.

08:47AM 1 Q Were you also involved in the -- your side job of the
08:47AM 2 promotional activities support?

08:47AM 3 A Yes, I was.

08:47AM 4 Q Do you know a person by the name of Michael Galmiche?

08:48AM 5 A Yes, I do.

08:48AM 6 Q How do you know Michael Galmiche?

08:48AM 7 A Because he was the lead producer for that particular event
08:48AM 8 that we were promoting for at the time.

08:48AM 9 Q So this is an event that you're referencing on December of
08:48AM 10 2012?

08:48AM 11 A Correct.

08:48AM 12 Q How long had you known or worked with Mr. Galmiche?

08:48AM 13 A Up until that time?

08:48AM 14 Q Well, let's start with as of today?

08:48AM 15 A 15 years.

08:48AM 16 Q Okay. So as of 2012, had you worked previously with
08:48AM 17 Mr. Galmiche on promotional type of activities?

08:48AM 18 A Yes.

08:48AM 19 Q What types of support or help did you provide to him
08:48AM 20 specifically?

08:48AM 21 A Well, there is another event that we were doing prior to
08:48AM 22 that. It was our high school block party where we would have
08:48AM 23 an event at the wet and wild -- the Wet'n'Wild park, and so it
08:48AM 24 was for high schoolers only and so it was a lot of promotions
08:49AM 25 and seeking sponsorships. But I would run the door with my

08:49AM 1 team ticketing, responding, cashiering and then I would have
08:49AM 2 about 60 volunteers come on board to just make sure that they
08:49AM 3 would chaperone throughout the water park to make sure it was a
08:49AM 4 safe event.

08:49AM 5 Q Okay. So as of 2012, approximately how long had you known
08:49AM 6 Mr. Galmiche?

08:49AM 7 A Four years.

08:49AM 8 Q Had you been working with him exclusively on this sort of
08:49AM 9 promotional support or did you have multiple promoters that you
08:49AM 10 worked with?

08:49AM 11 A At that time, it was just himself and his -- his partners.
08:49AM 12 He had partners.

08:49AM 13 Q Okay. So I want to take you then specifically to
08:49AM 14 December 15th of 2012. Do you recall helping Mr. Galmiche
08:49AM 15 promote an event that was coming up for New Year's of 2013?

08:49AM 16 A Yes, I do.

08:49AM 17 Q What was that event?

08:49AM 18 A It was the New Year's Eve party of the year a Kaka'ako
08:50AM 19 event.

08:50AM 20 Q Had you worked on that event previously or was that the
08:50AM 21 first year you worked on that with him?

08:50AM 22 A No. We -- we did that event a few years prior to.

08:50AM 23 Q On December 15th of 2012, do you recall what you were
08:50AM 24 doing specifically to promote that event?

08:50AM 25 A Yes. I was partnered with another person to hold the

08:50AM 1 screen that was projecting a still image of the event itself.

08:50AM 2 It was like a -- it was like seeing a big banner but digitally.

08:50AM 3 Q Okay. I'll show you a picture of that in -- in a moment,

08:50AM 4 but do you recall where you were promoting this particular

08:50AM 5 event, where you were holding the screen as you described?

08:50AM 6 A Yes. We were across the street from the opening of the

08:50AM 7 Restaurant Row parking lot that faces mauka of -- on Pohukaina

08:50AM 8 Street.

08:50AM 9 Q Why had you chosen that location to promote the New Year's

08:51AM 10 Eve party?

08:51AM 11 A Because like -- like anything else, we always want to

08:51AM 12 catch the let out. Those who are coming out of the -- who are

08:51AM 13 exiting the venue, we want to hit them.

08:51AM 14 Q So just so the jury understands some of the -- some of

08:51AM 15 your industry lingo.

08:51AM 16 A Sorry.

08:51AM 17 Q When you say you want to hit the let out, what does that

08:51AM 18 mean?

08:51AM 19 A We want those who are exiting one venue to see -- be the

08:51AM 20 eyes upon the advertisement that we're projecting.

08:51AM 21 Q Was there a certain venue or venues at the location

08:51AM 22 described that you wanted to try and target the -- the patrons

08:51AM 23 leaving from?

08:51AM 24 A Yes. We knew that the M was one of the few clubs where

08:51AM 25 they end very late, so that was our last stop in promoting.

08:51AM 1 Q This is the M Nightclub you're -- you're referencing?

08:51AM 2 A Correct.

08:51AM 3 Q And when you say they're one of the few clubs that were

08:51AM 4 able to stay open late, is -- is there a specific or special

08:52AM 5 license that you're aware of that allows those clubs to stay

08:52AM 6 open later and serve alcohol later?

08:52AM 7 A I -- I do not.

08:52AM 8 Q Okay.

08:52AM 9 A I just know that's what is said.

08:52AM 10 Q Okay. So what time do you recall arriving at the M

08:52AM 11 Nightclub or thereabouts to set up your -- your screen?

08:52AM 12 A If I recall correctly, I believe the M let out about 3

08:52AM 13 a.m. and so we were sure to be set up around between 2 and 3 I

08:52AM 14 believe.

08:52AM 15 Q Okay. So, Ms. Schubert, I'd like to show you as well as

08:52AM 16 the jury a few exhibits that have been previously admitted

08:52AM 17 already in this matter starting with Exhibit 4-63.

08:52AM 18 MR. INCIONG: Could we publish that, Your Honor?

08:52AM 19 That's been previously admitted from the government's original

08:52AM 20 list.

08:52AM 21 THE COURT: You may, go ahead.

08:52AM 22 MR. INCIONG:

08:52AM 23 Q Ms. Schubert, do you see the photo marked as 4-63?

08:52AM 24 A Yes, I do.

08:52AM 25 Q Is this the parking garage that you referenced a few

08:53AM 1 minutes ago where you were set up with the display to promote
08:53AM 2 the block party?

08:53AM 3 A Yes.

08:53AM 4 Q Where were you situated in reference to this particular
08:53AM 5 parking entry and exit?

08:53AM 6 A I was directly across the street on the right-hand side of
08:53AM 7 this photo.

08:53AM 8 MR. INCIONG: All right. Could we publish
08:53AM 9 Exhibit 4-64 previously admitted, Your Honor, at this time?

08:53AM 10 THE COURT: Yes, yes.

08:53AM 11 MR. INCIONG: Thank you.

08:53AM 12 BY MR. INCIONG:

08:53AM 13 Q Ms. Schubert, do you see Exhibit 4-64?

08:53AM 14 A Yes.

08:53AM 15 Q Does this photo show where you were situated across from
08:53AM 16 that parking garage exit and entrance?

08:53AM 17 A That is correct.

08:53AM 18 Q The screen in front of you is a touch screen. If you
08:53AM 19 wouldn't mind, could you just mark an X or a circle to show
08:53AM 20 approximately where you were situated on that night? So the
08:53AM 21 record shows -- should show you've drawn a circle right about
08:54AM 22 at the driveway to the small parking lot that's shown in that
08:54AM 23 photo. Is that true?

08:54AM 24 A Yes.

08:54AM 25 MR. INCIONG: Could we show the witness and the jury

08:54AM 1 Exhibit 4-135 previously admitted from the government's 10th
08:54AM 2 supplemental list, Your Honor?

08:54AM 3 THE COURT: Do you recall, Counsel, which supplemental
08:54AM 4 list?

08:54AM 5 MR. INCIONG: Tenth, I believe.

08:54AM 6 THE COURT: Tenth. Okay, go ahead.

08:54AM 7 MR. INCIONG: Thank you, Your Honor.

08:54AM 8 BY MR. INCIONG:

08:54AM 9 Q Ms. Schubert, this is just a different angle it looks like
08:54AM 10 across the street from the previous exhibit. Does this show
08:54AM 11 that same driveway entrance or to the parking lot where you
08:54AM 12 were set up across from the parking garage?

08:54AM 13 A Yes, it does.

08:54AM 14 Q Could you again, if you would, just write an X or a circle
08:54AM 15 to where you were situated that night. Again, the record
08:55AM 16 should show you've just drawn an X on the left edge of that
08:55AM 17 photo right in the driveway area to that small parking lot?

08:55AM 18 A Yes.

08:55AM 19 MR. INCIONG: Could we publish, Your Honor,
08:55AM 20 Exhibit 4-66 previously admitted from the government's original
08:55AM 21 list?

08:55AM 22 THE COURT: You may.

08:55AM 23 MR. INCIONG: Thank you, Your Honor.

08:55AM 24 BY MR. INCIONG:

08:55AM 25 Q Ms. Schubert, do you see this sketch or diagram showing

08:55AM 1 the -- the area you've just described?

08:55AM 2 A Yes.

08:55AM 3 Q Do you see the -- a small parking lot referenced in that
08:55AM 4 exhibit on 4-66?

08:55AM 5 A Yes, I do.

08:55AM 6 Q Is that directly across from the parking garage exit that
08:55AM 7 you previously identified?

08:55AM 8 A Yes, it is.

08:55AM 9 Q Other than maybe not being exactly to scale, does this
08:55AM 10 diagram accurately show that area where you were that evening?

08:56AM 11 A Yes.

08:56AM 12 MR. INCIONG: Could we publish, Your Honor, Exhibit
08:56AM 13 4-67 previously admitted from the government's original list?

08:56AM 14 THE COURT: Yes.

08:56AM 15 BY MR. INCIONG:

08:56AM 16 Q Ms. Schubert, do you recognize this photograph?

08:56AM 17 A Yes, I do.

08:56AM 18 Q How do you recognize that?

08:56AM 19 A I took that photo.

08:56AM 20 Q Is this the -- the display or the banner that you were
08:56AM 21 describing that you were holding across from the parking exit?

08:56AM 22 A That's correct.

08:56AM 23 Q So the cars coming out of that, they can -- they can read
08:56AM 24 that. It's -- it reads backwards here because you're behind
08:56AM 25 it?

08:56AM 1 A Yes, that's correct.

08:56AM 2 Q What does the display say or what did it say?

08:56AM 3 A New Year's Eve block party Kaka'ako park.

08:56AM 4 Q So you mentioned earlier that you were one of two people
08:56AM 5 that was holding this sign?

08:56AM 6 A Yes.

08:56AM 7 Q Why did it -- why did it require people to hold this
08:56AM 8 particular sign? There's no one there in this photo, right?

08:56AM 9 A Right. Yeah, we just set it up, but it was windy. There
08:57AM 10 are occasional big gusts of wind, and these are fastfold
08:57AM 11 screens. And if you know anything about a fastfold screen, it
08:57AM 12 becomes like a parachute. And so it's -- it's light enough to
08:57AM 13 where it will fly.

08:57AM 14 Q Okay. So when you were holding this screen, which side of
08:57AM 15 the screen were you on, the right or the left, as we're looking
08:57AM 16 at it in this photo?

08:57AM 17 A It would be to your right as we are looking at the --

08:57AM 18 Q Was there a second individual then on the left side?

08:57AM 19 A Yes, there was.

08:57AM 20 Q Approximately how many people were working with you that
08:57AM 21 evening as part of the promotional group including
08:57AM 22 Mr. Galmiche?

08:57AM 23 A I believe there were about six of us.

08:57AM 24 Q Where was Mr. Galmiche located in reference to the display
08:57AM 25 on this -- on this exhibit?

08:57AM 1 A He would be across the street on the side of the parking
08:57AM 2 structure.

08:57AM 3 MR. INCIONG: Okay. Could we go back for a moment to
08:57AM 4 Exhibit 4-63, please?

08:58AM 5 THE COURT: Go ahead.

08:58AM 6 BY MR. INCIONG:

08:58AM 7 Q So when you say "across the street," this is where
08:58AM 8 Mr. Galmiche was? Is it -- is that what's shown here in 4-63?

08:58AM 9 A That's correct.

08:58AM 10 Q Was he over there by himself or with anyone else?

08:58AM 11 A There were two other team people on our team with him.

08:58AM 12 Q What was Mr. Galmiche and the other team members doing
08:58AM 13 over on the other side of the street?

08:58AM 14 A Handing out flyers to those in their cars.

08:58AM 15 Q As they were exiting?

08:58AM 16 A Yes.

08:58AM 17 Q This was part of the plan along as how -- how you were
08:58AM 18 going to help promote the -- the New Year's Eve party?

08:58AM 19 A Yes.

08:58AM 20 MR. INCIONG: Okay. So can we go back to 4-67?

08:58AM 21 THE COURT: Go ahead, you may publish.

08:58AM 22 MR. INCIONG: Thank you, Your Honor.

08:58AM 23 BY MR. INCIONG:

08:58AM 24 Q So, Ms. Schubert, as -- as you look at 4-67, do you see in
08:58AM 25 the bottom there below the actual display screen it looks like

08:59AM 1 there's some equipment. I can see the illuminated rectangle,
08:59AM 2 for example, on the bottom right. Do you recognize those
08:59AM 3 items?

08:59AM 4 A Yes, I do.

08:59AM 5 Q What are those items?

08:59AM 6 A The illuminated item, that would be the -- the laptop.
08:59AM 7 It's a small laptop.

08:59AM 8 Q Okay. And is there something just to the left of that?

08:59AM 9 A Yes. It's connected to a LCD projector.

08:59AM 10 Q These two pieces of equipment were used to actually
08:59AM 11 project the display that's on the screen right there?

08:59AM 12 A That is correct.

08:59AM 13 Q Did you assist at all in setting this up or were you in
08:59AM 14 charge of setting this up?

08:59AM 15 A Yes, I was in charge of setting that up.

08:59AM 16 Q How were these two items powered?

08:59AM 17 A By generator.

08:59AM 18 Q Can you see the generator in this photo or does it -- is
08:59AM 19 it not shown?

08:59AM 20 A You can't see it but it would be to the far left where --
08:59AM 21 perhaps where that it looks like it's a pole that's bent.

09:00AM 22 Q Okay, all right.

09:00AM 23 A Yeah.

09:00AM 24 Q So did everything go as you -- as you expected as far as
09:00AM 25 setting up the screen and passing out the flyers and so forth?

09:00AM 1 A Yes.

09:00AM 2 Q At any point --

09:00AM 3 A I've -- I've done it before so, yeah, it was just like

09:00AM 4 clockwork.

09:00AM 5 Q Okay. At any point, was the promotion disrupted or

09:00AM 6 interrupted?

09:00AM 7 A Yes, it was.

09:00AM 8 Q What happened? How did that happen?

09:00AM 9 A So while I was standing on the -- the right of the screen

09:00AM 10 and cars were coming out, there -- there was a car, a black car

09:00AM 11 that pulled up right parallel to our screen, and it stopped

09:00AM 12 where I was holding the screen, like the front of the car

09:00AM 13 stopped like where I was.

09:00AM 14 Q Okay.

09:00AM 15 A And -- I'm sorry.

09:00AM 16 Q No. Go ahead.

09:01AM 17 A And -- and I remember first thing I thought was, wow, this

09:01AM 18 is a really nice car.

09:01AM 19 Q Do you recall what kind of car it was that made you think

09:01AM 20 that?

09:01AM 21 A Yeah, it was a black Porsche. And -- and I joked with my

09:01AM 22 partner who was holding the other side, I -- I told him, wow,

09:01AM 23 look at this. This is a really nice car. But then I -- I

09:01AM 24 said, why is it stopped right here? Like I didn't understand

09:01AM 25 why it stopped when we were watching cars come out and go to

09:01AM 1 the left or the right. But this car just came and just

09:01AM 2 stopped.

09:01AM 3 Q So if I understand correctly, it was stopped directly in

09:01AM 4 front of the display screen?

09:01AM 5 A Yes.

09:01AM 6 Q Okay. You said it was a black Porsche. Was this a sports

09:01AM 7 car, SUV, sedan?

09:01AM 8 A It was a sedan. I remember it having four -- four doors.

09:01AM 9 Q So what happened after the black Porsche stopped in front

09:01AM 10 of the -- the display screen?

09:01AM 11 A As I was speaking to Ryan, I noticed that the person who

09:01AM 12 was in the car was like -- can I turn?

09:02AM 13 Q Sure.

09:02AM 14 A Okay. So I'm -- I'm looking this way, and that person is

09:02AM 15 in his car and he's like talking. I can tell he's talking but

09:02AM 16 there's no one else in the car so I assumed he's like on the

09:02AM 17 phone.

09:02AM 18 Q Okay.

09:02AM 19 A And then he jumps out and then he yells at us to take this

09:02AM 20 fucking thing down. And -- and I -- I just looked at him like

09:02AM 21 why is he so angry? Like who is this guy? Like I didn't -- I

09:02AM 22 didn't understand why he was parked in -- like why he stopped

09:02AM 23 in the -- just on the road, number one. And then I didn't

09:02AM 24 understand why he was yelling at us for. Like I had no idea

09:02AM 25 who he was.

09:02AM 1 Q You've never seen this person or met this person before?

09:02AM 2 A No, never.

09:02AM 3 Q Did you respond to him in any way when he yelled to take
09:02AM 4 the -- the screen down?

09:02AM 5 A Yeah, the -- the teacher mommy brain in me said, Why you
09:02AM 6 gotta swear for? Like, I didn't understand. Yeah.

09:02AM 7 Q So what happened then?

09:03AM 8 A Well, he -- he start -- he continued yelling at us to take
09:03AM 9 this fucking thing down, and then he walked over to the other
09:03AM 10 side of the -- the street which was on the parking structure
09:03AM 11 side. And then he started yelling loudly at our other partners
09:03AM 12 Romeo, Valentine and Kanoe who had flyers in their hands.

09:03AM 13 Q Was there any sort of discussion that happened between any
09:03AM 14 of the individuals on that side of the street with this
09:03AM 15 individual?

09:03AM 16 A Yeah, I mean, he just basically kept yelling the same
09:03AM 17 thing, like -- like, you know, Why you guys fucking doing this,
09:03AM 18 and I told you guys not to fucking do this. Or, you know, I
09:03AM 19 let you -- I let you into my club and you guys turn around and
09:03AM 20 do this fucking kind of shit.

09:03AM 21 And just -- it was -- just he was just yelling the
09:04AM 22 same things over and over again and trying to take the flyers
09:04AM 23 away from the partners who had flyers in their hands.

09:04AM 24 Q While that was happening, had you made any attempts to
09:04AM 25 take the display down or -- or anything of that nature?

09:04AM 1 A Well, I stood there because I didn't understand why
09:04AM 2 somebody would be so angry and I -- I kept trying to ask my --
09:04AM 3 the partner who was holding the other side of the screen.
09:04AM 4 Q What was his name again?
09:04AM 5 A His name was Ryan.
09:04AM 6 Q Ryan last name?
09:04AM 7 A Sorry. It escapes me right now.
09:04AM 8 Q Okay. No problem.
09:04AM 9 A You know, just like, yeah.
09:04AM 10 Q So at -- at any point, did this individual who had pulled
09:04AM 11 up in the Porsche come back over to your side of the street?
09:04AM 12 A Yeah, he came back again. He was -- it seemed like he was
09:04AM 13 pacing like yelling there and yelling there and he would come
09:04AM 14 out but not all the way to us but still yelling to take it
09:04AM 15 down. And so that's when I noticed my partner was gone. And
09:05AM 16 then again, I didn't understand like where he went. And I
09:05AM 17 noticed the whole street got kind of quiet when it was so
09:05AM 18 noisy. It was so busy. It went from being super busy to
09:05AM 19 eerily quiet, and so that's when I -- I started walking to the
09:05AM 20 back to slowly power things down. Because at that point,
09:05AM 21 that's when Mike -- Mike would come across and tell me, you
09:05AM 22 know what, let's just shut this down.
09:05AM 23 Q So when you say Mike, you're referring to Michael
09:05AM 24 Galmiche?
09:05AM 25 A I'm sorry, yes. Mike Galmiche.

09:05AM 1 Q So when Mr. Galmiche came across and he told you to shut
09:05AM 2 this down, you started to -- to do so?

09:05AM 3 A Well, I was -- I was still watching what is going on
09:05AM 4 because I didn't -- I still couldn't wrap my head around what
09:05AM 5 was happening. I didn't know who he was. I didn't understand
09:05AM 6 why my partner all of the sudden disappeared and why the street
09:05AM 7 got so quiet.

09:05AM 8 And then when Mike did tell us to -- Mike Galmiche,
09:06AM 9 excuse me, when he told us to shut it down, that's when Mike
09:06AM 10 Miske came quickly. And then it looked like he was heading
09:06AM 11 towards the -- the laptop, so I beat him to it and I told him,
09:06AM 12 "Oh, I got it. I got it." So then I -- I shut -- because once
09:06AM 13 you close the laptop, it stops the image from projecting. So I
09:06AM 14 just shut the laptop.

09:06AM 15 Q Okay. So you -- you've referenced the individual by name
09:06AM 16 but --

09:06AM 17 A I'm sorry, yes.

09:06AM 18 Q -- but you -- you didn't know who this person was at that
09:06AM 19 time; is that correct?

09:06AM 20 A I did not.

09:06AM 21 Q Do you see the person in court today that pulled up in the
09:06AM 22 Porsche and was yelling at you and telling you to take the
09:06AM 23 display down?

09:06AM 24 A I do.

09:06AM 25 Q Could you indicate where that person is seated and what

09:06AM 1 they're wearing for the record, please?

09:06AM 2 A He's seated right there in a white suit.

09:06AM 3 MR. INCIONG: Your Honor, may the record reflect that

09:06AM 4 Ms. Schubert has identified the defendant.

09:06AM 5 THE COURT: Yes, excuse me. Yes, the record should

09:06AM 6 reflect the witness, Ms. Schubert's, identification of the

09:06AM 7 defendant, Mr. Miske.

09:06AM 8 BY MR. INCIONG:

09:06AM 9 Q So you said you beat him to it, so you closed the laptop.

09:07AM 10 So at that point, the display is -- is no longer visible,

09:07AM 11 correct?

09:07AM 12 A Yes. It -- it would just be a -- a blue -- a blue light,

09:07AM 13 a blue screen.

09:07AM 14 Q I see. What happened then?

09:07AM 15 A I started to slowly -- like what I always do. I started

09:07AM 16 to disconnect the cables and there is a way to wrap it so I was

09:07AM 17 wrapping the cables slowly and unhooking everything. And the

09:07AM 18 projector can't be powered off right away, because it'll kill

09:07AM 19 the projector. So I didn't want to unhook that right away I --

09:07AM 20 instead I attended to the -- the laptop itself.

09:07AM 21 Q Okay. Where was Mr. -- the person -- well let me ask you

09:07AM 22 this: So you -- you reference his name. How did you later

09:07AM 23 learn who this person was or who -- what his name was?

09:07AM 24 A Because when Mike Galmiche was being taken away in the

09:07AM 25 ambulance, a police officer asked him if he knew who assaulted

09:08AM 1 him. And then he -- he said, "Mike Miske."

09:08AM 2 And then I repeated it to the officer because he could
09:08AM 3 barely speak at that point, like I was near him, excuse me, and
09:08AM 4 then I related to the officer.

09:08AM 5 Q Okay. So when you were trying to take down the equipment
09:08AM 6 and wrap up the cords, where were Mr. Galmiche and Mr. Miske in
09:08AM 7 relation to you at that point?

09:08AM 8 A So they were arguing and they -- they would move from
09:08AM 9 where -- where I was which is if you're looking at the screen
09:08AM 10 to the right of the -- the fastfold screen and then they would
09:08AM 11 end up somewhere like -- like the movement to me was slow
09:08AM 12 because I was wrapping cords and looking up and I just heard
09:08AM 13 them arguing and arguing which I still didn't -- I didn't know
09:08AM 14 why someone would get so upset at us promoting this way because
09:08AM 15 we've done it before. And -- and then it was just he -- it was
09:09AM 16 two Mikes, Mike Galmiche and Michael Miske, just yelling
09:09AM 17 like not -- not yelling at each other but having words and then
09:09AM 18 they ended up to the left of the screen.

09:09AM 19 Q Okay. So as we're looking at this exhibit that's on
09:09AM 20 display right now so that's from the back as you're looking to
09:09AM 21 the left?

09:09AM 22 A Yes, that's correct.

09:09AM 23 Q Okay. And you're -- you're still behind that screen and
09:09AM 24 packing up the equipment?

09:09AM 25 A Yes. So where you see the equipment in the picture,

09:09AM 1 that's where I am. I am back there because I'm waiting for the
09:09AM 2 projector to quiet. That's how I know when it's cooled off.

09:09AM 3 Q Okay.

09:09AM 4 A Then I can successfully unplug it but...

09:09AM 5 Q Okay. So Mr. Galmiche and Mr. Miske then are to the left
09:09AM 6 of the screen as we are looking at it here?

09:09AM 7 A Yes.

09:09AM 8 Q What did you observe next?

09:09AM 9 A That's when I noticed to the right of the screen I saw a
09:10AM 10 group of gentlemen coming out of the -- the parking structure
09:10AM 11 that was now very, like I said, weirdly quiet, and they were
09:10AM 12 all dressed in black which for me I felt relieved. I thought
09:10AM 13 okay here come the bouncers. You know, everything is going to
09:10AM 14 like go away. Like I thought they were -- they were here to
09:10AM 15 help us --

09:10AM 16 Q Okay.

09:10AM 17 A -- with this gentlemen who was yelling at us.

09:10AM 18 Q So you -- you used the word "bouncer," what made you
09:10AM 19 believe that they were bouncers?

09:10AM 20 A Because I've been to the M before and just being in this
09:10AM 21 industry and line of work, bouncers tend to have that same
09:10AM 22 overall look of -- especially the M very classy all in black.

09:10AM 23 Q So they were all dressed the same?

09:10AM 24 A Correct.

09:10AM 25 Q Okay. So where did this group of bouncers proceed after

09:10AM 1 you first saw them come out of the parking garage?

09:10AM 2 A They beelined straight for where Mr. Galmiche and Mike

09:11AM 3 Miske were having their -- sharing words.

09:11AM 4 Q Did they intercede?

09:11AM 5 A They actually started to be a part of I guess helping Mike

09:11AM 6 Miske deal with Mike Galmiche.

09:11AM 7 Q Describe what you saw.

09:11AM 8 A So up until that point, it was just a lot of yelling, and

09:11AM 9 like -- like I said, it didn't really concern me. But once

09:11AM 10 those gentlemen in black came to the -- to the scene then I saw

09:11AM 11 them punching and kicking Mike Galmiche.

09:12AM 12 Q Did you know any of these bouncers by chance or --

09:12AM 13 A I did not.

09:12AM 14 Q -- did you recognize any of them at the time?

09:12AM 15 A I did not.

09:12AM 16 Q Did you see Mr. Miske involved in this assault?

09:12AM 17 A Yes, I did.

09:12AM 18 Q What did you see Mr. Miske specifically do?

09:12AM 19 A I saw him throw a couple blows at Mike Galmiche only after

09:12AM 20 he was being held by other men in black.

09:12AM 21 Q When you say "he was being held," what do you mean

09:12AM 22 exactly?

09:12AM 23 A They were trying to hold him up like this, like one on one

09:12AM 24 side and one on the other side so that his body was like open

09:12AM 25 to blows.

09:13AM 1 Q Did you see -- see specifically where Mr. Miske was

09:13AM 2 punching Mr. Galmiche?

09:13AM 3 A Yeah, I know it was up here.

09:13AM 4 Q So you're motioning upper body?

09:13AM 5 A Yes.

09:13AM 6 Q Head or face?

09:13AM 7 A Yes.

09:13AM 8 Q What was your reaction once you saw that?

09:13AM 9 A That's when I was shocked. I -- I -- as a high school
09:13AM 10 teacher of 29 years, 25 years at Farrington, I've seen -- I've
09:13AM 11 seen many lunchtime fights because I throw all the events
09:13AM 12 during lunchtime. And I've seen fights and I -- and I -- I
09:13AM 13 feel like I'm clued into when a fight is going to happen, but
09:13AM 14 I -- not once did I think that there'd be an assault on someone
09:13AM 15 because of a projection that we're doing. And so I -- I
09:13AM 16 panicked. I mean, I -- I -- honestly I don't know what I felt.
09:13AM 17 I just know that that's when I knew it was serious and I -- I
09:13AM 18 abandoned my mission of wrapping cords and I walked -- I
09:14AM 19 started walking towards where the assault was happening.

09:14AM 20 Q Did you have any interaction or any conversation with any
09:14AM 21 of the bouncers as you walked over to where the assault was
09:14AM 22 happening?

09:14AM 23 A Yeah. There was a -- there was a bouncer who was standing
09:14AM 24 if you look at the screen to the left but more back. And I
09:14AM 25 walked right past him and he grabbed me on my left shoulder and

09:14AM 1 he said, "Oh, sister. It's too late."

09:14AM 2 Like it was almost like he was surprised that I came
09:14AM 3 out of the -- the dark. I guess they didn't see me. And he
09:14AM 4 grabbed me and said, "Sister, it's too late."

09:14AM 5 And I -- I -- I just remember being so focused on
09:14AM 6 watching Mike getting assaulted, Mike Galmiche getting
09:14AM 7 assaulted that I -- I shrugged him off but I -- I kept
09:14AM 8 beelining, walking towards where they were assaulting Mike
09:14AM 9 Galmiche.

09:14AM 10 Q Why did you keep walking towards the -- the location of
09:14AM 11 the assault?

09:15AM 12 A Because I couldn't believe they were beat -- beating on
09:15AM 13 him and I started yelling, "He has four daughters. He has four
09:15AM 14 daughters. He just lost his fiancée."

09:15AM 15 And then to which the guys were scream -- yelling
09:15AM 16 like, we don't fucking care.

09:15AM 17 And even -- even that I couldn't -- I couldn't believe
09:15AM 18 it like that they would still -- it was like unfair. You know,
09:15AM 19 it was -- they were holding him. He couldn't get away.

09:15AM 20 Q Did you eventually get right to -- right next to where all
09:15AM 21 this was happening?

09:15AM 22 A I did. I did.

09:15AM 23 Q What -- what did you do?

09:15AM 24 A I -- I -- I was hoping that as a female that they would
09:15AM 25 just stop. But it didn't. And I -- I -- I just remember going

09:15AM 1 to where Mike Galmiche was and I just put myself around him
09:15AM 2 like tried to bear hug him. And then eventually successfully
09:16AM 3 got him down to the ground and then I tried to put my -- I put
09:16AM 4 my weight around him because I could hear his shallow
09:16AM 5 breathing. And so I put my body like I can't -- I don't know
09:16AM 6 how to show it but -- so his body but I was -- my -- my elbow's
09:16AM 7 on my -- my legs were positioned over him and he was curled
09:16AM 8 under me.

09:16AM 9 Q So you're basically trying to cover him and protect him?
09:16AM 10 A Yeah, I -- I -- really thought they would stop.

09:16AM 11 Q So the assault did not stop when you did that?
09:16AM 12 A No.

09:16AM 13 Q What happened?
09:16AM 14 A I got kicked in my -- in my head here and then my elbows
09:16AM 15 on the -- my -- my arm -- my forearm here and here when I was
09:16AM 16 like this over him. And I kept yelling, like, I'm a chick.
09:16AM 17 Like, I'm a woman. I'm a girl. And that's when I looked up to
09:16AM 18 the person who -- who was on the right-hand side who seemed to
09:17AM 19 like be doing more like kicking and kicking on this side versus
09:17AM 20 this side. And it was because I got -- I was up against the
09:17AM 21 curb. There was a curb -- street and the curb, so we were like
09:17AM 22 butt up there, so it's harder to get to him this way versus his
09:17AM 23 body being this side where the -- the street is.

09:17AM 24 Q So when you looked up at the -- you said the person that
09:17AM 25 seemed to be doing most of the kicking, did you have a -- a

09:17AM 1 clear view of that person's face?

09:17AM 2 A Yes.

09:17AM 3 Q Was there anything about that person that stood out to you
09:17AM 4 that you recall?

09:17AM 5 A Yeah, that there was like a big tattoo and he had a very
09:17AM 6 broad -- very broad, big forehead. Yeah, because he was
09:17AM 7 looking down.

09:17AM 8 MR. INCIONG: Your Honor, could we publish
09:17AM 9 Exhibit 1-58 previously admitted from our original list?

09:17AM 10 THE COURT: Go ahead.

09:17AM 11 BY MR. INCIONG:

09:17AM 12 Q Ms. Schubert, do you recognize the individual in 1-58?

09:18AM 13 A Yes.

09:18AM 14 Q How do you recognize that person?

09:18AM 15 A The tattoos and the broad forehead.

09:18AM 16 Q Is this the person that was kicking you as you were trying
09:18AM 17 to protect and cover Mr. Galmiche's body?

09:18AM 18 A Yes.

09:18AM 19 Q How long did the assault continue after you had kind of
09:18AM 20 enveloped Mr. -- Mr. Galmiche with your own body?

09:18AM 21 A I don't know. I -- I -- it felt like forever but I don't
09:18AM 22 know.

09:18AM 23 Q Did it stop at some point?

09:18AM 24 A It did.

09:18AM 25 Q Do you know why it stopped?

09:18AM 1 A I only noticed it stopped when I heard sirens coming near

09:18AM 2 us.

09:18AM 3 Q Did the police respond shortly after?

09:18AM 4 A Yes.

09:18AM 5 MR. INCIONG: We can take Exhibit 1-58 down for the

09:18AM 6 moment.

09:18AM 7 BY MR. INCIONG:

09:18AM 8 Q So once the police sirens or -- I shouldn't say police

09:19AM 9 sirens. Sirens were heard, did -- that -- that's the point you

09:19AM 10 believe the assault stopped?

09:19AM 11 A Yes. I -- I noticed that it got quiet and so I looked up

09:19AM 12 and I saw like the police cars were coming this way on

09:19AM 13 Pohukaina. And when I looked to my right, I also saw another

09:19AM 14 group of men dressed the same as the first set of bouncers that

09:19AM 15 I saw. I saw a second set of bouncers come out same -- same

09:19AM 16 dress.

09:19AM 17 Q They came out of the same area, the parking garage exit

09:19AM 18 entry?

09:19AM 19 A Yes.

09:19AM 20 Q So as far as the -- the group of bouncers that was

09:19AM 21 involved in the assault, did you see where they went?

09:19AM 22 A I did not.

09:19AM 23 Q Did you see where Mr. Miske went?

09:19AM 24 A I did not.

09:19AM 25 Q Did you see the black Porsche leave the area?

09:20AM 1 A I did not.

09:20AM 2 Q So the second group of bouncers that you described, did
09:20AM 3 they come over and -- to where you were?

09:20AM 4 A They did.

09:20AM 5 Q Did you have any interaction with them?

09:20AM 6 A Yes, I did.

09:20AM 7 Q How was your interaction with them different from the
09:20AM 8 first set?

09:20AM 9 A They actually asked me if I was okay. And I said, "Where
09:20AM 10 were you guys?" Because they looked different too.

09:20AM 11 Q What do you mean by "they looked different"?

09:20AM 12 A I'm Samoan, so they all looked some Polynesian like they
09:20AM 13 did not look like the first set of bouncers that I saw.

09:20AM 14 Q When the police arrived, did they ask you to speak with
09:20AM 15 them?

09:20AM 16 A I'm sorry?

09:20AM 17 Q Did the police ask you to speak with them after they
09:20AM 18 arrived?

09:20AM 19 A They did not. And I was surprised with everything that
09:21AM 20 just happened. There were a bunch of police watching
09:21AM 21 Mr. Galmiche being taken away by the ambulance. And I had to
09:21AM 22 tell them, "Aren't any of you going to take my statement?"

09:21AM 23 To which they all started looking at each other and
09:21AM 24 then one cop said, "Okay."

09:21AM 25 Q Did you have any discussions with Mr. Galmiche before he

09:21AM 1 was taken away in the ambulance that you referenced?

09:21AM 2 A The only -- the only thing that he said was Mike Miske's
09:21AM 3 name when the police officer asked him if he knew who did that
09:21AM 4 to him, who assaulted him.

09:21AM 5 Q So you eventually made a statement then to the Honolulu
09:21AM 6 police?

09:21AM 7 A Yes, I did.

09:21AM 8 Q Was that a verbal statement or a written statement or
09:21AM 9 both?

09:21AM 10 A No. It was a written statement.

09:21AM 11 Q Was it on a form that you -- that you filled out that you
09:21AM 12 were provided?

09:21AM 13 A Yes. And I'm very familiar with those forms
09:21AM 14 unfortunately. Because, like I said, at Farrington I --
09:22AM 15 because I'm out during lunchtime, I'm always -- it's our group
09:22AM 16 that -- that throws lunchtime events. Whenever there's --
09:22AM 17 unfortunately our students choose to fight when there's a crowd
09:22AM 18 which is lunchtime. I've -- I've had to fill out those forms
09:22AM 19 many, many times.

09:22AM 20 Q So the police coming to Farrington is not unusual in your
09:22AM 21 experience?

09:22AM 22 A No. No. They're -- they're there daily almost
09:22AM 23 unfortunately.

09:22AM 24 Q So you filled out this type of form statement on a number
09:22AM 25 of previous occasions as well?

09:22AM 1 A That's correct.

09:22AM 2 Q All right. Were there any other individuals or -- or
09:22AM 3 potential witnesses that you saw that were filling out forms as
09:22AM 4 well?

09:22AM 5 A Yes. There were two other young women who -- when -- when
09:22AM 6 I noticed it got quiet and I could hear sirens, I recall two
09:22AM 7 women screaming like, no worry, sister. Like we saw
09:23AM 8 everything. We -- we saw everything. We're going to -- we got
09:23AM 9 you or something like that. And then so they were next to me
09:23AM 10 filling out the -- their statements, so it was myself, a police
09:23AM 11 officer and the two other young ladies.

09:23AM 12 Q So after you completed that statement, where did you go
09:23AM 13 next?

09:23AM 14 A I went to -- well, first I had to -- I had to get all the
09:23AM 15 equipment into the van by myself because nobody was around.
09:23AM 16 All our partners -- like I said, I still didn't understand
09:23AM 17 where everybody went. I didn't understand why I was by myself
09:23AM 18 and what just happened, so I had to load everything into the
09:23AM 19 van and then I made my way to the -- the emergency room.

09:23AM 20 Q Which hospital was that do you recall?

09:23AM 21 A It was at Queens.

09:23AM 22 Q That's where Mr. Galmiche was being treated?

09:23AM 23 A That's correct.

09:23AM 24 Q Were you able to see him there?

09:23AM 25 A Not -- not for -- for maybe four more hours or three more

09:24AM 1 hours.

09:24AM 2 Q Okay. When you were finally able to see him, what was his
09:24AM 3 state?

09:24AM 4 A He was -- he was not in good shape. He told me that he
09:24AM 5 had two broken ribs and he had bruises. He had swollen --
09:24AM 6 swelling on his head.

09:24AM 7 Q While you were seeing Mr. Galmiche at Queens Hospital, did
09:24AM 8 the Honolulu police show up there?

09:24AM 9 A Yes. There was a detective in his room.

09:24AM 10 Q Did you speak with that detective?

09:24AM 11 A I did.

09:24AM 12 Q Did he ask you to provide a statement?

09:24AM 13 A He did to which I told him I already completed a statement
09:24AM 14 hours ago on the scene.

09:24AM 15 Q So did you prepare a -- a second statement?

09:24AM 16 A I did.

09:24AM 17 Q Was this using the same form that you were familiar with
09:24AM 18 that you filled out previously in your capacity as a teacher at
09:25AM 19 Farrington?

09:25AM 20 A That is correct.

09:25AM 21 MR. INCIONG: Your Honor, could we show just for the
09:25AM 22 witness please Exhibit 4-139 from our 10th supplemental exhibit
09:25AM 23 list?

09:25AM 24 THE COURT: Yes, go ahead.

09:25AM 25 BY MR. INCIONG:

09:25AM 1 Q Ms. Schubert, do you see the document that's been marked

09:25AM 2 on the screen in front of you as 4-139?

09:25AM 3 A I do.

09:25AM 4 Q Do you recognize this?

09:25AM 5 A Yes, I do.

09:25AM 6 Q How do you recognize that?

09:25AM 7 A That's my handwriting. That's my statement.

09:25AM 8 Q Now, is this the statement that you made at Queens

09:25AM 9 Hospital or the statement that you made across from the

09:25AM 10 Restaurant Row parking exit?

09:25AM 11 A This is the Queens Hospital statement.

09:25AM 12 Q Have you ever seen your written statement that you made

09:25AM 13 across from Restaurant Row?

09:25AM 14 A I did not, but I did ask for it many times and they said

09:26AM 15 it -- there was no statement.

09:26AM 16 Q HPD was never able to provide you with a copy of your

09:26AM 17 statement?

09:26AM 18 A No.

09:26AM 19 Q Of -- of the first statement?

09:26AM 20 A Correct.

09:26AM 21 Q This one you've seen before today?

09:26AM 22 A Yes.

09:26AM 23 Q Were you present when the detective or other HPD personnel

09:26AM 24 was taking any photos of Mr. Galmiche's injuries?

09:26AM 25 A I was not.

09:26AM 1 Q But you saw -- you were able to see the injuries that you
09:26AM 2 described just a minute ago?

09:26AM 3 A I did, yes.

09:26AM 4 Q Okay. I'd like you to look at a couple of photos that
09:26AM 5 have been previously admitted into evidence.

09:26AM 6 MR. INCIONG: If we could start, Your Honor, with
09:26AM 7 Exhibit 4-76 from our original list?

09:26AM 8 THE COURT: Go ahead.

09:26AM 9 MR. INCIONG: If we could publish that for the jury as
09:27AM 10 well.

09:27AM 11 THE COURT: You may.

09:27AM 12 MR. INCIONG: Thank you.

09:27AM 13 BY MR. INCIONG:

09:27AM 14 Q Ms. Schubert, do you recognize these two photos?

09:27AM 15 A Yes, I do.

09:27AM 16 Q Do they accurately show Mr. Galmiche's injuries as you saw
09:27AM 17 them at Queens Hospital in the early morning of December 15,
09:27AM 18 2012?

09:27AM 19 A Yes. Although the pictures don't --

09:27AM 20 Q Well, you hesitate so explain -- explain why you hesitate,
09:27AM 21 if you could?

09:27AM 22 A It looked worse than what the pictures show.

09:27AM 23 MR. INCIONG: Okay. Could we show Ms. Schubert and
09:27AM 24 the -- the jury 4-77 also please previously admitted?

09:27AM 25 THE COURT: You may, go ahead.

09:27AM 1 MR. INCIONG: Thank you, Your Honor.

09:27AM 2 BY MR. INCIONG:

09:27AM 3 Q Do you see those two photos, Ms. Schubert?

09:27AM 4 A Yes, I do.

09:27AM 5 Q Do you recognize those as being photos depicting the

09:27AM 6 injuries that Mr. Galmiche suffered on that night?

09:27AM 7 A Yes.

09:27AM 8 Q Do those accurately show his injuries?

09:28AM 9 A Again, it doesn't -- it doesn't show -- it doesn't do it

09:28AM 10 justice but that is where he was injured.

09:28AM 11 Q Okay. Do you recall whether Mr. Galmiche stayed overnight

09:28AM 12 at the following night or was he discharged the next day?

09:28AM 13 A I cannot recall.

09:28AM 14 Q Do you recall going to see Mr. Galmiche the following day?

09:28AM 15 A Yes.

09:28AM 16 Q Did you, in fact, take some photos yourself of his

09:28AM 17 injuries the next day?

09:28AM 18 A Yes.

09:28AM 19 MR. INCIONG: Your Honor, could I show Ms. Schubert as

09:28AM 20 well as the jury a series of photos beginning with Exhibit 4-68

09:28AM 21 going through 4-75 all of which have been previously admitted

09:28AM 22 from our original exhibit list?

09:28AM 23 THE COURT: Yes, you may.

09:28AM 24 MR. INCIONG: Thank you.

09:28AM 25 BY MR. INCIONG:

09:28AM 1 Q So starting with 4-68. Is this one of the photos you took
09:29AM 2 the day after the assault, Ms. Schubert?
09:29AM 3 A Yes.
09:29AM 4 Q Why did you take this particular shot?
09:29AM 5 A Because he had bruising and swelling here.
09:29AM 6 Q You're motioning to your forehead?
09:29AM 7 A Forehead, excuse me, yes.
09:29AM 8 Q All right. Any other spots on his face that you wanted
09:29AM 9 to -- to document as well?
09:29AM 10 A His left black eye.
09:29AM 11 Q Okay. Could we go to Exhibit 4-69? Did you take this
09:29AM 12 photo?
09:29AM 13 A Yes, I did.
09:29AM 14 Q Why did you take this particular shot?
09:29AM 15 A Because of the -- I wanted to make sure that if we ever
09:29AM 16 had to, you know, document or have our day in court just to
09:29AM 17 show the -- the injuries that he had.
09:29AM 18 Q Okay. Could we go to 4-70, please? And are those
09:30AM 19 injuries to his left ear area that you were documenting as
09:30AM 20 well?
09:30AM 21 A Yes.
09:30AM 22 Q So this photo accurately shows it as it appeared the next
09:30AM 23 day?
09:30AM 24 A Correct.
09:30AM 25 Q Could we go to 4-71? Is this the -- the area on his

09:30AM 1 forehead that you were describing a minute ago that you

09:30AM 2 documented in this photo?

09:30AM 3 A Correct, yes.

09:30AM 4 Q Could we go to 4-72? Do you recognize this as one of the

09:30AM 5 photos you took?

09:30AM 6 A Yes.

09:30AM 7 Q Did these or does this photo show injuries behind his

09:30AM 8 right ear?

09:30AM 9 A Yes.

09:30AM 10 Q Could we display 4-73? What is shown in this photo that

09:31AM 11 you took, Ms. Schubert?

09:31AM 12 A That's the -- the area of -- of redness was where he

09:31AM 13 claimed like he was -- it was sensitive for him. So I took a

09:31AM 14 photo of it.

09:31AM 15 Q You mentioned when you were at the hospital you learned he

09:31AM 16 had a couple of broken ribs, correct?

09:31AM 17 A Yes.

09:31AM 18 Q Could we go to 4-75, please? What were you trying to

09:31AM 19 capture in this photo?

09:31AM 20 A Just the scratches and the -- the areas in which he was --

09:31AM 21 the injuries that he sustained from the assault.

09:31AM 22 Q Now, you said when you saw Mr. Galmiche at Queens he was

09:31AM 23 in bad shape. Okay. So a day later, how would you describe

09:31AM 24 his -- his condition at that point?

09:31AM 25 A He was still weak. He could speak in a -- in a very soft

09:32AM 1 tone. We couldn't make him laugh because it would hurt. Even
09:32AM 2 coughing or sneezing was hard for him.

09:32AM 3 Q All right. Now, you mentioned before you went to the
09:32AM 4 hospital since everyone on your team had left the area
09:32AM 5 except for you, and you were -- you were the one left to
09:32AM 6 collect the equipment?

09:32AM 7 A Yes.

09:32AM 8 Q I'd like to show you a number of photos that were taken of
09:32AM 9 the equipment that evening.

09:32AM 10 MR. INCIONG: Your Honor, could I publish for the jury
09:32AM 11 the exhibits previously admitted starting at 4-79 through 4-88
09:32AM 12 from our original list?

09:32AM 13 THE COURT: You may, go ahead.

09:32AM 14 MR. INCIONG: Thank you.

09:32AM 15 BY MR. INCIONG:

09:32AM 16 Q Starting with 4-79. Ms. Schubert, do you recognize what
09:32AM 17 that is?

09:32AM 18 A Yes. That is the projector that we used.

09:32AM 19 Q So the bottom half of that projector looks like it's
09:33AM 20 broken open. That is not how it appeared I take it before this
09:33AM 21 incident happened?

09:33AM 22 A Correct. It was -- it was intact prior to.

09:33AM 23 Q Was this -- was this item destroyed?

09:33AM 24 A Yes, it was.

09:33AM 25 Q Did you see who destroyed any of this equipment?

09:33AM 1 A Yes, I did.

09:33AM 2 Q Who did you see destroying the equipment?

09:33AM 3 A It was Mike Miske.

09:33AM 4 Q How do you see him actually destroying this equipment?

09:33AM 5 A Because like I said, I -- I was in the back. I closed the

09:33AM 6 laptop. And then after he and Mike exchanged a few words and

09:33AM 7 it was like happening all at the same time when I saw the --

09:33AM 8 the bouncers, the men in black, coming up the parking

09:33AM 9 structure. I noticed as soon as they came that's when he

09:33AM 10 started to like, you know, like throw, pick up our -- like he

09:33AM 11 picked this up and threw it down and same with the laptop. And

09:34AM 12 then he tried the same with the generator but it's kind of

09:34AM 13 heavy, so he just kind of like kicked it over.

09:34AM 14 Q So this driveway area you were in --

09:34AM 15 A Yes.

09:34AM 16 Q -- that you were set up in, that's cement I take it?

09:34AM 17 A Right.

09:34AM 18 Q So when you say he was throwing it down on the ground, he

09:34AM 19 was throwing it on the cement?

09:34AM 20 A Yeah. Well, he only did it like picked it up and threw it

09:34AM 21 down one time. He just kind of went through our items and then

09:34AM 22 went back to where the assault would -- would happen.

09:34AM 23 Q So when he threw the items down on the ground, that's when

09:34AM 24 you -- it was smashed?

09:34AM 25 A Yes.

09:34AM 1 Q Could we show 4-80 next, please? Do you recognize what's
09:34AM 2 shown there?

09:34AM 3 A Yes.

09:34AM 4 Q What is that?

09:34AM 5 A That is the laptop that we used that night.

09:34AM 6 Q Was that destroyed that night?

09:34AM 7 A Yes.

09:34AM 8 MR. INCIONG: Could we go to 4-81? If we can zoom in
09:34AM 9 on the -- that top photo?

09:34AM 10 BY MR. INCIONG:

09:34AM 11 Q It's a little bit hard to see but do you -- do you
09:35AM 12 recognize what's shown in this shot?

09:35AM 13 A That's our generator that was powering the projector.

09:35AM 14 Q Is the generator, it looks like it's the orange or red
09:35AM 15 object on the left lower corner?

09:35AM 16 A Yes. It's the lower left. It's -- it's a Honda
09:35AM 17 generator.

09:35AM 18 MR. INCIONG: Could we show 4-82 next, please? Thank
09:35AM 19 you.

09:35AM 20 BY MR. INCIONG:

09:35AM 21 Q Do you know what that is, Ms. Schubert?

09:35AM 22 A That is the lens from our projector.

09:35AM 23 Q Does it normally -- is it normally separate from the rest
09:35AM 24 of the -- the unit?

09:35AM 25 A No, it is not. It's built in.

09:35AM 1 Q So this was broken after Mr. Miske threw it on the ground?

09:35AM 2 A Yes.

09:35AM 3 Q Could we go to 4-83, please? Is this another a little bit

09:35AM 4 better shot I think of the generator and the laptop?

09:36AM 5 A That is correct.

09:36AM 6 Q The laptop here is on the -- shown on the ground, correct?

09:36AM 7 A Yes.

09:36AM 8 Q When you were operating the -- the laptop to show the

09:36AM 9 display, was it -- was it on the ground or was it somewhere

09:36AM 10 else?

09:36AM 11 A No. It was elevated on a crate. We used like a milk

09:36AM 12 crate.

09:36AM 13 MR. INCIONG: Could we show the witness 4-84 as well

09:36AM 14 as to the jury please next?

09:36AM 15 BY MR. INCIONG:

09:36AM 16 Q Is this another shot of the projector that now is broken?

09:36AM 17 A That is correct.

09:36AM 18 Q Could we display 4-85, please? Same generator again? Or

09:36AM 19 I'm sorry, same projector?

09:36AM 20 A Yes, same projector.

09:36AM 21 Q All right. Could we display 4-86, please? What is this,

09:36AM 22 Ms. Schubert?

09:36AM 23 A That is our fastfold screen that is broken.

09:36AM 24 Q So normally it would be flat and smooth when it's set up?

09:36AM 25 A Yes.

09:37AM 1 Q Was this -- how was this broken? Was it the screen, the

09:37AM 2 frame, both?

09:37AM 3 A It's the frame is not standing anymore and the screen is

09:37AM 4 sagging as well.

09:37AM 5 Q So you were left trying to salvage this, pack it up before

09:37AM 6 you went to the hospital?

09:37AM 7 A Yes, um-hm.

09:37AM 8 MR. INCIONG: Could we show the witness 4-87 as well

09:37AM 9 the jury, please?

09:37AM 10 BY MR. INCIONG:

09:37AM 11 Q Do you recognize this as the laptop that you were using

09:37AM 12 that night?

09:37AM 13 A That is correct.

09:37AM 14 Q Is that in a different state than when you saw it when you

09:37AM 15 were originally setting up to promote that -- that night?

09:37AM 16 A Yes.

09:37AM 17 Q It's broken now?

09:37AM 18 A Yes.

09:37AM 19 Q Could we go to 4-88 next? Do you recognize this,

09:37AM 20 Ms. Schubert?

09:37AM 21 A Yes. That is the laptop that we used that night.

09:38AM 22 Q It looks like the -- the screen on the monitor is

09:38AM 23 shattered there?

09:38AM 24 A Correct.

09:38AM 25 Q Was that shattered before Mr. Miske arrived?

09:38AM 1 A No, it was not.

09:38AM 2 MR. INCIONG: Okay. We can take that down for the

09:38AM 3 moment. Thank you.

09:38AM 4 BY MR. INCIONG:

09:38AM 5 Q So you made a couple of written statements you indicated

09:38AM 6 basically the -- the early morning of the event, this is in the

09:38AM 7 early morning hours, correct?

09:38AM 8 A Um-hm, yes.

09:38AM 9 Q Did you have contact with the Honolulu Police Department

09:38AM 10 subsequent to that in -- in regard to their investigation of

09:38AM 11 the case?

09:38AM 12 A After -- after the incident, yes.

09:38AM 13 Q Do you recall making a number of recorded statements to

09:38AM 14 HPD after that?

09:38AM 15 A Yes.

09:38AM 16 Q How many times do you recall going to HPD to be

09:38AM 17 interviewed after the incident?

09:38AM 18 A At least three and I didn't understand why.

09:39AM 19 Q Do you recall on the first of those also being shown a

09:39AM 20 couple of -- a number of photo line ups?

09:39AM 21 A Yes, I do.

09:39AM 22 MR. INCIONG: Your Honor, could we show to the witness

09:39AM 23 only please Exhibit 4-93 from our original exhibit list?

09:39AM 24 THE COURT: Go ahead.

09:39AM 25 BY MR. INCIONG:

09:39AM 1 Q Ms. Schubert, do you see Exhibit 4-93 on the screen in
09:39AM 2 front of you?
09:39AM 3 A I -- I do.
09:39AM 4 Q Do you recognize this exhibit?
09:39AM 5 A Yes, I do.
09:39AM 6 Q How do you recognize it?
09:39AM 7 A It was the photo lineup that was shown to me, and they
09:39AM 8 asked if I could identify someone in the photo lineup.
09:39AM 9 Q Did you recognize anybody in that particular photo lineup?
09:39AM 10 A I did.
09:39AM 11 Q And did you mark this particular exhibit to show who you
09:39AM 12 recognized?
09:39AM 13 A I did.
09:39AM 14 Q How did you mark that?
09:39AM 15 A I circled it and then I initialed.
09:39AM 16 Q Did you also put a date on there as well?
09:40AM 17 A Yes. The date and -- date and time.
09:40AM 18 Q Do you recognize this as the -- at least a -- a copy of
09:40AM 19 the photo lineup that you marked on January 3rd of 2013 at the
09:40AM 20 Honolulu Police Department?
09:40AM 21 A Yes.
09:40AM 22 MR. INCIONG: Your Honor, I would move to admit
09:40AM 23 Exhibit 4-93.
09:40AM 24 THE COURT: Any objection?
09:40AM 25 MR. KENNEDY: No objection.

09:40AM 1 THE COURT: Without objection 4-93 then is admitted
09:40AM 2 and you may publish.

09:40AM 3 MR. INCIONG: Thank you, Your Honor.

09:40AM 4 (Exhibit 4-93 was received in evidence.)

09:40AM 5 BY MR. INCIONG:

09:40AM 6 Q So, Ms. Schubert, this is the photo lineup or one of the
09:40AM 7 photo lineups you were shown on January 3rd of 2013?

09:40AM 8 A Yes.

09:40AM 9 Q You said you circled the individual you -- that you
09:40AM 10 recognized?

09:40AM 11 A Yes.

09:40AM 12 Q So that was the individual in the upper right-hand corner
09:40AM 13 of the six shots?

09:40AM 14 A Correct.

09:40AM 15 Q Who did you recognize that as?

09:40AM 16 A Mike Miske.

09:40AM 17 Q To the left of that, is that your handwriting that you
09:40AM 18 indicated that shows the -- the date and your initials?

09:40AM 19 A Correct.

09:41AM 20 MR. INCIONG: Could we show the witness only, Your
09:41AM 21 Honor, Exhibit 4-95 from our original exhibit list as well?

09:41AM 22 THE COURT: Go ahead.

09:41AM 23 BY MR. INCIONG:

09:41AM 24 Q Ms. Schubert, do you recognize Exhibit 4-95?

09:41AM 25 A Yes, I do.

09:41AM 1 Q Was this another photo lineup that you were shown on
09:41AM 2 January 3, 2013?

09:41AM 3 A Yes.

09:41AM 4 Q So this was about just over a -- a couple weeks after the
09:41AM 5 incident?

09:41AM 6 A Yes.

09:41AM 7 Q Did you recognize anybody in this particular lineup?

09:41AM 8 A I did.

09:41AM 9 Q And did you mark it and -- and date and initial it as you
09:41AM 10 did with the previous?

09:41AM 11 A Yes, I did.

09:41AM 12 Q Is this an accurate copy of the photo lineup that you
09:41AM 13 observed and marked on January 3rd of 2013?

09:41AM 14 A Yes.

09:41AM 15 MR. INCIONG: Your Honor, I would move to admit 4-95.

09:41AM 16 THE COURT: Denied.

09:41AM 17 BY MR. INCIONG:

09:41AM 18 Q Ms. Schubert, do you recognize your handwriting on the --
09:42AM 19 on this particular photo or photo lineup?

09:42AM 20 A Yes, that is my handwriting.

09:42AM 21 Q Where is that located?

09:42AM 22 A In the lower right-hand corner of the -- the photo that I
09:42AM 23 circled with my -- with the date and the time.

09:42AM 24 MR. INCIONG: Your Honor, I would move to admit 4-95.

09:42AM 25 THE COURT: Counsel, Mr. Kennedy?

09:42AM 1 MR. KENNEDY: I believe we need a little more
09:42AM 2 foundation, Your Honor.

09:42AM 3 THE COURT: There -- there's an issue, Counsel.

09:42AM 4 MR. KENNEDY: Yes.

09:42AM 5 MR. INCIONG: Thank you, Your Honor. I'm sorry.

09:42AM 6 BY MR. INCIONG:

09:42AM 7 Q Ms. Schubert, I misspoke with the -- the date. The date
09:42AM 8 rather -- I believe I said January 3rd of 2013. Actually, what
09:42AM 9 was the date that you wrote in your handwriting on this
09:43AM 10 particular exhibit?

09:43AM 11 A That is February 6th.

09:43AM 12 Q 2013?

09:43AM 13 A 2013, correct.

09:43AM 14 Q So does this -- is this Exhibit 4-95 an accurate copy of
09:43AM 15 the photo lineup you viewed and marked on that date February 6,
09:43AM 16 2013?

09:43AM 17 A Correct.

09:43AM 18 MR. INCIONG: Thank you, Your Honor. I move to admit
09:43AM 19 Exhibit 4-95.

09:43AM 20 THE COURT: Any objection?

09:43AM 21 MR. KENNEDY: No objection at this time, Your Honor.

09:43AM 22 THE COURT: Without objection 4-95 is admitted then
09:43AM 23 and you may publish.

09:43AM 24 MR. INCIONG: Thank you, Your Honor.

09:43AM 25 (Exhibit 4-95 was received in evidence.)

09:43AM 1 BY MR. INCIONG:

09:43AM 2 Q So, Ms. Schubert, this is the photo lineup you viewed in
09:43AM 3 February, February 6th of 2013?

09:43AM 4 A Yes.

09:43AM 5 Q And you circled the middle individual on the bottom row?

09:43AM 6 A Correct.

09:43AM 7 Q Did you -- this is the individual that you recognized from
09:43AM 8 the incident, correct?

09:43AM 9 A Yes.

09:43AM 10 Q And specifically what -- how did you recognize this
09:43AM 11 individual? What did he do that you saw that day?

09:43AM 12 A Well, because he's the one that wouldn't stop kicking me
09:43AM 13 on my right side by my head.

09:44AM 14 Q This was the person you -- you noticed the tattoo on their
09:44AM 15 neck you said and the -- the forehead?

09:44AM 16 A Yeah, because I was looking up at him, yelling at him to,
09:44AM 17 like, I'm a fricking chick, like, I'm a woman. Like, What are
09:44AM 18 you doing, you know.

09:44AM 19 Q So when you initially met with HPD, did you know this
09:44AM 20 individual's name?

09:44AM 21 A I did not.

09:44AM 22 MR. INCIONG: You can take that down. Thank you.

09:44AM 23 BY MR. INCIONG:

09:44AM 24 Q Did you later learn his name?

09:44AM 25 A I did.

09:44AM 1 Q How did you come about his name?

09:44AM 2 A I saw something on the news or something.

09:44AM 3 Q Okay. And you recognized the individual at that point?

09:44AM 4 A Yes.

09:44AM 5 Q Did you make that information known to the Honolulu Police
09:44AM 6 Department?

09:44AM 7 A I did.

09:44AM 8 Q Was it then that they had you come back and showed you the
09:44AM 9 second lineup?

09:44AM 10 A Yes.

09:44AM 11 MR. INCIONG: Could we show for the witness only
09:44AM 12 Exhibit 4-143? This is from our 11th supplemental exhibit
09:45AM 13 list, Your Honor.

09:45AM 14 THE COURT: Go ahead. I've got it now. Thank you.

09:45AM 15 BY MR. INCIONG:

09:45AM 16 Q Ms. Schubert, do you see Exhibit 4-143?

09:45AM 17 A I do.

09:45AM 18 Q Did you have a chance to review that document prior to
09:45AM 19 coming to court today?

09:45AM 20 A I did.

09:45AM 21 Q Do you see the -- notice the -- the make and type of
09:45AM 22 vehicle that is shown in this document?

09:45AM 23 A Yes, I do.

09:45AM 24 Q Was that consistent with the type of vehicle that you
09:45AM 25 observed parked in front of the display on the night of this

09:45AM 1 incident or -- or early morning December 15, 2012?

09:45AM 2 A Yes.

09:45AM 3 MR. INCIONG: Your Honor, I would move to admit

09:45AM 4 Exhibit 4-143 as a certified public document. Additionally,

09:45AM 5 the parties have stipulated to certified business records being

09:46AM 6 admitted as well. The certification is contained on the bottom

09:46AM 7 half of that exhibit.

09:46AM 8 THE COURT: Any objection to 4-143?

09:46AM 9 MR. KENNEDY: No objection to the document, Your

09:46AM 10 Honor.

09:46AM 11 THE COURT: All right. Without objection then that

09:46AM 12 exhibit is admitted and you pay may I publish it.

09:46AM 13 MR. INCIONG: Thank you, Your Honor.

09:46AM 14 (Exhibit 4-143 was received in evidence.)

09:46AM 15 BY MR. INCIONG:

09:46AM 16 Q So, Ms. Schubert, if we look at this document that's just

09:46AM 17 been exhibit -- just been admitted, do you recognize this as a

09:46AM 18 registration for a -- a particular vehicle?

09:46AM 19 A Yes, I do.

09:46AM 20 Q And do you see -- or actually, let's do it this way. If

09:46AM 21 you could use the touch screen, could you circle the make and

09:46AM 22 type of the -- the vehicle that you recognized when you

09:46AM 23 reviewed this previously? So you circled under make it says

09:46AM 24 P-O-R-S, correct?

09:47AM 25 A Correct.

09:47AM 1 Q And then under type, that's F 4-DSD, four-door sedan?

09:47AM 2 A Correct.

09:47AM 3 Q Do you see who that registered owner of that vehicle is

09:47AM 4 listed in the -- the lower left box?

09:47AM 5 A Yes, I do.

09:47AM 6 Q Who is the registered owner?

09:47AM 7 A Kama'aina Termite and Pest Control and Miske M.

09:47AM 8 MR. INCIONG: Okay. We can take that down.

09:47AM 9 BY MR. INCIONG:

09:47AM 10 Q So, Ms. Schubert, at -- at any point, did yourself and/or

09:47AM 11 Mr. Galmiche to your knowledge take any sort of legal action,

09:47AM 12 civil legal action against Mr. Miske or any of the other

09:47AM 13 individuals that were involved in the assault?

09:47AM 14 A Yes, we did.

09:47AM 15 Q Do you recall what was that?

09:48AM 16 A We got a lawyer for -- to seek damages.

09:48AM 17 Q What happened with that legal proceeding?

09:48AM 18 A Nothing. It just -- we kept getting calls that it was --

09:48AM 19 I don't know what the legal verbiage is, but basically it's

09:48AM 20 just drawn out to the point where we just didn't know -- we

09:48AM 21 just felt like it was going nowhere.

09:48AM 22 Q Was that civil action ultimately dismissed?

09:48AM 23 A Yes.

09:48AM 24 Q Do you know when it was dismissed?

09:48AM 25 A I'm not sure. Sometime in 2016 I think.

09:48AM 1 Q Okay. Did you ever attempt to pursue any additional or
09:48AM 2 new legal action civilly since then?

09:48AM 3 A No. We were just tired of going nowhere, getting --
09:48AM 4 getting nowhere, excuse me.

09:49AM 5 Q So after this incident had happened, did this affect
09:49AM 6 your -- your side business with any of the work you did with
09:49AM 7 promoters after that?

09:49AM 8 A It did.

09:49AM 9 Q Did it change the way you did business?

09:49AM 10 A Oh, absolutely.

09:49AM 11 Q How -- how so?

09:49AM 12 A Many of our team members especially those who were there,
09:49AM 13 they did not want to do any nighttime promotions. It was that
09:49AM 14 fear of being out and being vulnerable to something like this
09:49AM 15 happening again.

09:49AM 16 Q Now, I've been remiss to ask you we talked about
09:49AM 17 Mr. Galmiche's injuries. You said you were -- you were kicked
09:49AM 18 and struck. Did you have injuries as a result of this?

09:49AM 19 A I did. Very minor compared to his.

09:49AM 20 Q Did you need to seek any sort of medical treatment for
09:49AM 21 those?

09:49AM 22 A No. The detective recommended that I perhaps seek medical
09:50AM 23 attention. But at the time, I was just, like I said, I still
09:50AM 24 couldn't believe what happened and I'm a single mother, so I
09:50AM 25 had to think about -- I was more fearful for my children the

09:50AM 1 more I learned about what other people said about Mike Miske.

09:50AM 2 It then made me --

09:50AM 3 MR. KENNEDY: Objection, Your Honor, hearsay.

09:50AM 4 THE COURT REPORTER: I'm sorry. I didn't hear the
09:50AM 5 ruling on the objection, Your Honor.

09:50AM 6 THE COURT: Sustained.

09:50AM 7 BY MR. INCIONG:

09:50AM 8 Q Did you make any changes in -- in your daily lifestyle or
09:50AM 9 habits as a result of this?

09:50AM 10 A I did for that month. The remaining month of December, I
09:50AM 11 had my children stay with their father. I felt it was safer
09:50AM 12 for them.

09:50AM 13 Q So there were no lasting physical effects then I under --
09:50AM 14 as I understand it?

09:50AM 15 A No.

09:51AM 16 Q What about on you personally mentally?

09:51AM 17 A Yeah, I -- just talking about this again is -- I was just
09:51AM 18 hoping we'd -- I'd never have to revisit this again because
09:51AM 19 it makes -- I find myself just always glancing over my shoulder
09:51AM 20 or being hypervigilant ever since the incident.

09:51AM 21 Q So this is almost 12 years ago now. So even then, it
09:51AM 22 still has had an lasting impact on you?

09:51AM 23 A Yes.

09:51AM 24 Q Is it still fresh to this day when -- when you're forced
09:51AM 25 to come in and -- and talk about this today?

09:51AM 1 A Yes.

09:51AM 2 MR. INCIONG: Thank you, Ms. Schubert.

09:51AM 3 I have nothing further, Your Honor.

09:51AM 4 THE COURT: Mr. Kennedy?

09:52AM 5 CROSS-EXAMINATION

09:52AM 6 BY MR. KENNEDY:

09:52AM 7 Q So if I understand your testimony, after the event, you --
09:52AM 8 both you and Michael Galmiche retained a lawyer; is that
09:52AM 9 correct?

09:52AM 10 A Yes.

09:52AM 11 Q And then you filed a civil complaint, correct?

09:52AM 12 A Correct.

09:52AM 13 Q And the civil complaint was to seek damages I believe,
09:52AM 14 right?

09:52AM 15 A Correct.

09:52AM 16 Q And in that civil complaint, the process would involve
09:52AM 17 discovery, right?

09:52AM 18 A Yes.

09:52AM 19 Q And so discovery means that, you know, questions are posed
09:52AM 20 to you; questions are posed to the other side, right?

09:52AM 21 A Yes.

09:52AM 22 Q And that eventually the court may have arbitration, right?
09:53AM 23 You were aware of that?

09:53AM 24 A Yes.

09:53AM 25 Q And eventually then a judge is sort of a referee to the

09:53AM 1 complaint, correct?

09:53AM 2 A Yes.

09:53AM 3 Q And what happened in the end is the judge dismissed the

09:53AM 4 complaint, correct?

09:53AM 5 A Yes.

09:53AM 6 Q All right. And that happened over a couple of years I

09:53AM 7 believe you said, correct?

09:53AM 8 A Yes.

09:53AM 9 Q All right. And so that was the end of that matter in

09:53AM 10 terms of that civil case that you brought regarding the events

09:53AM 11 that we've talked about, correct?

09:53AM 12 A Yes.

09:53AM 13 Q All right. Now, I want to shift attention a little bit.

09:53AM 14 You mentioned that you were -- I believe your words you still

09:53AM 15 didn't understand where everyone was going that evening, and I

09:53AM 16 want to ask you some questions about that, okay?

09:53AM 17 A Yes.

09:53AM 18 Q All right. So you mentioned that your -- the screen could

09:54AM 19 become like a -- a kite and fly, right?

09:54AM 20 A Yes.

09:54AM 21 Q So on one side you were holding it, right?

09:54AM 22 A Yes.

09:54AM 23 Q And then another person I believe his first name was Ryan,

09:54AM 24 if I remember correctly, was holding it?

09:54AM 25 A Yes.

09:54AM 1 Q Okay. And at some point early on, while there was arguing
09:54AM 2 between Mr. Galmiche and Mr. Miske, Ryan just left, right?
09:54AM 3 A I guess so, yes.
09:54AM 4 Q Okay. You -- you looked around and he was gone?
09:54AM 5 A Correct.
09:54AM 6 Q And that was when they were simply arguing, right?
09:54AM 7 A Yes.
09:54AM 8 Q Okay. Now, eventually you said that everyone else left,
09:54AM 9 right?
09:54AM 10 A Yes.
09:54AM 11 Q All right. Now, in promoting the event, you used a -- a
09:54AM 12 phrase I think I heard the words correctly, although I'm a
09:54AM 13 little under the weather so I'll try to make certain that I do.
09:55AM 14 But I think you said catch the let out. Is that -- were those
09:55AM 15 your words?
09:55AM 16 A Yes.
09:55AM 17 Q All right. And so it's you're -- the -- the purpose of
09:55AM 18 this was to set up at a location where patrons of the M were
09:55AM 19 leaving that evening, right?
09:55AM 20 A Yes.
09:55AM 21 Q Okay. Now, were you aware -- you said that you had done
09:55AM 22 the Kaka'ako event previously, right?
09:55AM 23 A Yes.
09:55AM 24 Q Okay. Were you aware that or were you part of -- that's
09:55AM 25 just simply bad question.

09:55AM 1 Let me ask you this: Were you aware of efforts made
09:55AM 2 by folks on behalf of your event to go inside the M and hand
09:55AM 3 out the same materials regarding that event weeks prior?

09:55AM 4 A I am not.

09:55AM 5 Q Okay. So you were not aware of whether individuals that
09:55AM 6 come in once, twice, three times and had been distributing the
09:56AM 7 information and asked to leave but kept coming back?

09:56AM 8 A I am not aware of that.

09:56AM 9 Q Okay. So you're not aware of the others that may have
09:56AM 10 been there that were leaving when they saw Mr. Miske, correct?

09:56AM 11 A Correct.

09:56AM 12 Q All right. Now, with respect to some of what happened,
09:56AM 13 you said that for a period of time the initial thing after the
09:56AM 14 black Porsche showed up and the individual that you've
09:56AM 15 identified as Mr. Miske came out of the car, there were some
09:56AM 16 words about basically using F bombs but, What are you doing?
09:56AM 17 I've let you into my club. You keep doing this, right?

09:56AM 18 A Yes.

09:56AM 19 Q And at the time, you didn't understand what he was talking
09:56AM 20 about, right?

09:56AM 21 A I did not.

09:57AM 22 Q Because you didn't even know who he was, right?

09:57AM 23 A Correct.

09:57AM 24 Q You didn't know that he was associated with the M?

09:57AM 25 A I did not.

09:57AM 1 Q Didn't have any idea of whether some of the same
09:57AM 2 individuals had been in there, asked to leave and kept coming
09:57AM 3 back and doing this?

09:57AM 4 A Correct.

09:57AM 5 Q And didn't understand whether they may have an event on
09:57AM 6 New Year's Eve as well?

09:57AM 7 A Correct.

09:57AM 8 Q And so the purpose of showing up again and again, you
09:57AM 9 weren't aware of that, right?

09:57AM 10 A Correct.

09:57AM 11 Q Okay. Then there was a period of time where you said that
09:57AM 12 the person you identified as Mr. Miske was going towards the
09:57AM 13 laptop very early, right? Did you shut off the projector,
09:57AM 14 correct?

09:57AM 15 A Could you say that, again?

09:57AM 16 Q Yeah, it was just a terrible question.

09:57AM 17 There was a period of time where you -- the person you
09:57AM 18 identified as Mr. Miske was going towards the laptop that we
09:57AM 19 saw in the picture, and I think it's Government's
09:58AM 20 Exhibit 4-1437 (verbatim) I believe?

09:58AM 21 A Yes.

09:58AM 22 Q Okay. And that you went over and you closed the laptop
09:58AM 23 down, right?

09:58AM 24 A Correct.

09:58AM 25 Q And that shut down the projection, right?

09:58AM 1 A It just shut down the image going to the projector.

09:58AM 2 Q Because the projector needs some time to cool down before
09:58AM 3 you can shut it down completely?

09:58AM 4 A Correct.

09:58AM 5 Q Okay. So at that point, the -- what was being projected
09:58AM 6 on the screen no longer was up there, right?

09:58AM 7 A Yes.

09:58AM 8 Q Then there was a period of time where you said that
09:58AM 9 Mr. Miske and Mr. Galmiche were exchanging words, right?

09:58AM 10 A Yes.

09:58AM 11 Q And the two of them were arguing, right?

09:58AM 12 A Yes.

09:58AM 13 Q And you couldn't hear what they were arguing about, right?

09:58AM 14 A Yes.

09:58AM 15 Q You don't know what the substance of it was, right?

09:58AM 16 A At that -- at that time when you're talking about, yes.

09:58AM 17 Q Okay. And so at a certain point then that continues for
09:58AM 18 some time and I believe you said the they were sort of moving
09:59AM 19 from left to right by the screen?

09:59AM 20 A That's correct.

09:59AM 21 Q And so moving back and forth and arguing for a period of
09:59AM 22 time, correct?

09:59AM 23 A (Inaudible response.)

09:59AM 24 Q All right. At a certain point, you saw some men come out
09:59AM 25 of the garage area that you recognized due to their classy

09:59AM 1 outfits as bouncers, right?

09:59AM 2 A Yes.

09:59AM 3 Q All right. And there were roughly about four of them?

09:59AM 4 A Four to -- four to six of them.

09:59AM 5 Q Four to six of them, okay. And they were all dressed in
09:59AM 6 black long pants and in long black sleeved tops?

09:59AM 7 A Black tops, correct.

09:59AM 8 Q Okay. And the -- so they were coming and they ran up and
09:59AM 9 they surrounded Michael Galmiche, correct?

09:59AM 10 A They approached him.

10:00AM 11 Q All right. They approached him, right. At a certain
10:00AM 12 point they had him surrounded, correct?

10:00AM 13 A I wouldn't say surrounded but they were near him.

10:00AM 14 Q Okay. All right. And there was a -- and at that point,
10:00AM 15 Mr. Miske and a guy who had a clear-colored ear piece were
10:00AM 16 standing off to the side. Do you recall that?

10:00AM 17 A I recall the gentlemen with the clear-colored ear piece to
10:00AM 18 the side, yes.

10:00AM 19 Q Okay. And you also recall in the -- that Mr. Miske was
10:00AM 20 standing by the side with him as well, correct?

10:00AM 21 A No. He was -- he was further ahead in front of the
10:00AM 22 gentleman.

10:00AM 23 Q All right. All right. And then what happened is one of
10:00AM 24 the four men who approached began punching Michael, correct?

10:00AM 25 A No.

10:00AM 1 Q And you said while another was trying to hold Michael up,
10:01AM 2 right?

10:01AM 3 A Someone was holding Michael.

10:01AM 4 Q And he was near the grill on the hood of the parked truck,
10:01AM 5 correct?

10:01AM 6 A At that point when I started walking forward, yes.

10:01AM 7 Q Okay. All right. Now, you indicated that at that point
10:01AM 8 you originally weren't concerned when the bouncers came up,
10:01AM 9 correct? If I understood your testimony earlier, you indicated
10:01AM 10 that when you saw the first folks come up, you were happy to
10:02AM 11 see them, right?

10:02AM 12 A Yes. Because I thought they were coming to help with the
10:02AM 13 gentleman who was yelling.

10:02AM 14 Q Okay. All right. And then at a certain point, a second
10:02AM 15 group of folks came up as well, right?

10:02AM 16 A That was not until everything was done.

10:02AM 17 Q All right.

10:02AM 18 A Like Mike was -- Michael -- Mike Galmiche was already
10:02AM 19 taken away -- being taken away by the ambulance.

10:02AM 20 Q All right. So if I understood your testimony the -- this
10:02AM 21 morning, you -- you indicated that the actual equipment you saw
10:02AM 22 Mr. Miske throw one of the items to the ground, correct?

10:02AM 23 A Two of the items.

10:02AM 24 Q Two of the items, correct?

10:02AM 25 A Yes.

10:02AM 1 Q Okay. And that was while you were over by the screen,
10:02AM 2 right?

10:02AM 3 A Yes.

10:02AM 4 Q And then after that occurred is when you went over to try
10:02AM 5 to protect Mr. Galmiche, right?

10:02AM 6 A Correct.

10:02AM 7 Q And that the -- Mr. Miske was over with you with those
10:03AM 8 items, correct?

10:03AM 9 A No.

10:03AM 10 Q You were over by the screen, right, correct?

10:03AM 11 A Yes.

10:03AM 12 Q And that you indicated that you saw Mr. Miske throw two of
10:03AM 13 the items down, right?

10:03AM 14 A Yes.

10:03AM 15 Q And then you went over to protect Mr. Galmiche?

10:03AM 16 A Yes.

10:03AM 17 MR. KENNEDY: I have nothing further.

10:03AM 18 Thank you, Your Honor.

10:03AM 19 THE COURT: Mr. Inciong, anything further?

10:03AM 20 MR. INCIONG: Thank you, Your Honor.

10:03AM 21 REDIRECT EXAMINATION

10:03AM 22 BY MR. INCIONG:

10:03AM 23 Q Ms. Schubert, just so we're -- we're clear on exactly what
10:03AM 24 happened, walk us through what you observed from the point
10:03AM 25 where you observed Mr. Miske smashing the equipment and then

10:03AM 1 you walking over to protect Mr. Galmiche and -- and where all
10:03AM 2 the people that you knew or recognized were in that -- that
10:03AM 3 kind of -- that sequence?

10:04AM 4 A So close the laptop, letting it -- the projector cool
10:04AM 5 down. There's other cables that are running to and from each
10:04AM 6 other because they interface with one another, the projector
10:04AM 7 and the -- the laptop with the -- the generator. And there's
10:04AM 8 bags that we have where everything goes back into. So I'm
10:04AM 9 preparing everything to go backwards. It's the reverse of the
10:04AM 10 materials.

10:04AM 11 Q Okay.

10:04AM 12 A And as it was happening, when I saw the gentlemen coming
10:04AM 13 up, I started wrapping one set of cables from the -- for the
10:04AM 14 laptop that went to the projector. And when I saw the -- the
10:04AM 15 men in black coming out through the structure, I felt relieved
10:04AM 16 like okay, like okay. They're going to deal with this angry
10:04AM 17 person who's yelling at us.

10:04AM 18 Q Right.

10:04AM 19 A And then everything just happened so fast, like that's
10:05AM 20 when I went from just like okay I'm just going to do my mission
10:05AM 21 of wrapping up like I always do to the -- the yelling, to
10:05AM 22 the -- the breaking of the things, to the men going towards
10:05AM 23 Mike and then Mike Miske doing like jumping in with the assault
10:05AM 24 that's happening, the man -- me -- then I realized because to
10:05AM 25 the left of the screen that's when I could see everything

10:05AM 1 taking place, that's when I started to walk quickly towards
10:05AM 2 the -- the assault that was taking place. I dropped the cords.
10:05AM 3 The gentleman told me, "Sister, it's too late," on my
10:05AM 4 left side. But I kept going, bear hugged him, got him down to
10:05AM 5 the ground.
10:05AM 6 Q Okay. So at which point did you see Mr. Miske smash the
10:05AM 7 equipment in that sequence?
10:05AM 8 A It was -- according to what I remember, it was when he
10:06AM 9 already assaulted Mike.
10:06AM 10 Q Okay.
10:06AM 11 A And he came back and then I went and that's when the other
10:06AM 12 gentlemen were -- were like grabbing him. And the reason why I
10:06AM 13 said I remember the grill of that car so vividly is because
10:06AM 14 Mike Galmiche was trying to get under it and they were pulling
10:06AM 15 him out as he was trying to seek shelter under the vehicle.
10:06AM 16 Q So when you were bear hugging or -- or trying to protect
10:06AM 17 Mr. Galmiche, did you see where Mr. Miske was at that point?
10:06AM 18 A No, I did not.
10:06AM 19 Q Okay. Now, you were asked about whether you were aware
10:06AM 20 that people from your team had passed out promotional flyers
10:06AM 21 inside the club previously?
10:06AM 22 A Right.
10:06AM 23 Q Is that a practice that sometimes you would do?
10:06AM 24 A Not me.
10:06AM 25 Q But your group?

10:06AM 1 A The group, yes, but not me. Yeah, I don't do that.

10:06AM 2 Q Did you have any understanding or knowledge as to, you

10:06AM 3 know, how that was decided if -- if people would go into the

10:07AM 4 club to pass out flyers as opposed to staying outside like they

10:07AM 5 were on that night?

10:07AM 6 A No. Our team -- our team is a team of 12 at the time, so

10:07AM 7 I don't know. I didn't -- I can't -- I don't keep track of

10:07AM 8 what everybody is doing.

10:07AM 9 Q So in -- you've done this for an extended period of time,

10:07AM 10 correct?

10:07AM 11 A Correct.

10:07AM 12 Q Did this outside of multiple different clubs and nighttime

10:07AM 13 venues, correct?

10:07AM 14 A Yes, yes.

10:07AM 15 Q All right. If flyers had been passed out against the

10:07AM 16 owner's permission, in your knowledge of how the industry

10:07AM 17 works, would it have been justifiable that people get beat up

10:07AM 18 for doing that?

10:07AM 19 A No.

10:07AM 20 MR. KENNEDY: Objection, argumentative.

10:07AM 21 THE COURT: Sustained.

10:07AM 22 BY MR. INCIONG:

10:07AM 23 Q Now, the civil complaint that was dismissed, was there

10:07AM 24 anything to prevent you from refiling that complaint?

10:07AM 25 A No.

10:08AM 1 Q Why did you choose not to?

10:08AM 2 A Because we were -- well, I can't speak for Mike Galmiche,
10:08AM 3 but I was personally tired of nothing happening. We weren't
10:08AM 4 getting answers. I was just -- I've never been through
10:08AM 5 something like this before, so I -- I couldn't believe that
10:08AM 6 with all the evidence that I felt we had that nothing --
10:08AM 7 nothing came of it.

10:08AM 8 MR. INCIONG: Thank you.

10:08AM 9 I have nothing further, Your Honor.

10:08AM 10 THE COURT: Mr. Kennedy, anything else?

10:08AM 11 MR. KENNEDY: Nothing further, Your Honor.

10:08AM 12 THE COURT: All right. Ms. Schubert, you may step
10:08AM 13 down. Thank you.

10:08AM 14 THE WITNESS: Thank you.

11:04AM 15 --oo0oo--

11:04AM 16 MR. AKINA: Government calls Laurence Miller.

11:05AM 17 THE CLERK: Please raise your right hand.

11:05AM 18 LAURENCE MILLER,
11:05AM 19 called as a witness, having been first duly sworn, was examined
11:05AM 20 and testified as follows:

11:05AM 21 THE CLERK: Please state your full name for the
11:05AM 22 record.

11:05AM 23 THE WITNESS: Laurence Miller.

11:05AM 24 THE CLERK: Spell your first and last name.

11:05AM 25 THE WITNESS: L-A-U-R-E-N-C-E, M-I-L-L-E-R.

11:05AM 1 DIRECT EXAMINATION

11:05AM 2 BY MR. AKINA:

11:05AM 3 Q Good morning, Mr. Miller.

11:05AM 4 A Hello.

11:05AM 5 Q Do you currently reside in Hawaii?

11:05AM 6 A No. In Austin, Texas.

11:05AM 7 Q And have you ever lived in Hawaii?

11:05AM 8 A Yes.

11:05AM 9 Q About what years did you live here?

11:05AM 10 A 2006 to maybe 2017.

11:05AM 11 Q And during the time that you were living here in Hawaii,

11:05AM 12 what sorts of things did you do for work?

11:05AM 13 A I had a juice bar. I did magic, kind of like a freelance

11:06AM 14 entrepreneur.

11:06AM 15 Q Did you have a surfboard miniatures business?

11:06AM 16 A Yeah, a little -- yeah, a little -- I made souvenir

11:06AM 17 surfboards.

11:06AM 18 Q In May of 2015, that's during that period you were still

11:06AM 19 in Hawaii, right?

11:06AM 20 A Yes.

11:06AM 21 Q At that time, did you own a van?

11:06AM 22 A Yes.

11:06AM 23 Q What type of van was it?

11:06AM 24 A It was like a blue Chevy van.

11:06AM 25 Q And did that van have any pest problems?

11:06AM 1 A Yeah, it was infested with cockroaches.

11:06AM 2 Q So back in 2015, what did you do about that?

11:06AM 3 A I reached out to Kama'aina Termite because I thought that
11:06AM 4 they could fumigate it and eliminate the -- the cockroach
11:06AM 5 infestation.

11:06AM 6 Q Was there a particular reason -- well, backing up. Did
11:06AM 7 you do any research prior to reaching out to Kama'aina Termite
11:06AM 8 and Pest Control?

11:06AM 9 A Yeah, yeah, I knew what service I wanted. I wanted to
11:06AM 10 have it fumigated.

11:06AM 11 Q And why did you reach out to Kama'aina Termite and Pest
11:06AM 12 Control?

11:06AM 13 A Because they offer that service, and I had seen that
11:07AM 14 they'd been tenting houses like in the community.

11:07AM 15 Q You said that you wanted your van fumigated. Why -- what
11:07AM 16 were other options that you were aware of?

11:07AM 17 A I think you can treat -- you can treat insects with
11:07AM 18 sprays, insecticides and fumigants, and I guess there's a
11:07AM 19 difference between them in regards to -- well, this was
11:07AM 20 important to me. Fumigants don't leave any -- or yeah, they
11:07AM 21 don't leave any residue because they're gases and I guess they
11:07AM 22 dissipate so they -- once the fumigant goes in, there's nothing
11:07AM 23 on the surface. So if you're allergic to that type of
11:07AM 24 insecticide, you -- it wouldn't affect you because it's not
11:07AM 25 there after they treat your vehicle or your home.

11:07AM 1 Q And this is opposed to spraying it with some type of

11:07AM 2 chemical?

11:07AM 3 A Yeah, if you spray it with a chemical, there might be a

11:07AM 4 residue that lasts for some time. And then if you have contact

11:07AM 5 it and you're allergic to it, you could have a reaction.

11:07AM 6 Q And why was it important to you to use the fumigant as

11:07AM 7 opposed to a spray that left some residue behind?

11:07AM 8 A Well, like I said, yeah, so I didn't want to have a

11:08AM 9 residue. My dad, he's really old. He has like respiratory

11:08AM 10 problems. I also just don't like to be around these types of

11:08AM 11 chemicals either especially if you're in a car or you're

11:08AM 12 handling the steering wheel, things like that.

11:08AM 13 THE COURT REPORTER: I need you to slow down.

11:08AM 14 THE WITNESS: Oh, okay, sorry.

11:08AM 15 MR. AKINA: Continue.

11:08AM 16 THE COURT REPORTER: Start your answer again.

11:08AM 17 THE WITNESS: Yeah, no problems.

11:08AM 18 Yeah, my dad, he has respiratory problems and I didn't

11:08AM 19 want him to be affected by any residues that would be left in

11:08AM 20 the vehicle from a pesticide.

11:08AM 21 BY MR. AKINA:

11:08AM 22 Q So on or about May 25th of 2015, did you end up taking

11:08AM 23 your van to Kama'aina Termite and Pest Control?

11:08AM 24 A Yes.

11:08AM 25 Q And when you brought it in for service, did you explain

11:08AM 1 what you wanted and what you didn't want to happen?

11:08AM 2 A Yeah, absolutely.

11:08AM 3 Q Was that agreed upon as far as you understood it?

11:08AM 4 A Yeah, it was very clear.

11:08AM 5 Q What part of the island was Kama'aina Termite and Pest

11:08AM 6 Control located where you took your van?

11:08AM 7 A Well, that location, I don't know if they have multiple,

11:08AM 8 but it was located in Ward kind of near the theater and

11:08AM 9 sports -- the old Sports Authority.

11:09AM 10 MR. AKINA: Could we publish Exhibit 5-22 which is

11:09AM 11 already in evidence from the government's original list?

11:09AM 12 THE COURT: Go ahead.

11:09AM 13 By MR. AKINA:

11:09AM 14 Q Do you recognize this location?

11:09AM 15 A Yes.

11:09AM 16 Q What is this?

11:09AM 17 A This is the location where I dropped off my van.

11:09AM 18 Q So you dropped off your van, and what was your

11:09AM 19 understanding of what happens when a van is fumigated?

11:09AM 20 A So when anything is, I think, fumigated, they have to

11:09AM 21 encapsulate it in a tent so that they can introduce the gas so

11:09AM 22 the gas can maintain in an environment for some period of time

11:09AM 23 so that it kills all the insects.

11:09AM 24 Q After you dropped off your van, did you see it the

11:09AM 25 following day?

11:09AM 1 A Yes. I saw it that evening and I saw it the next day as

11:10AM 2 well.

11:10AM 3 Q Okay. So later that same day you saw it initially?

11:10AM 4 A Yes. So I dropped off the van then I went to see a movie

11:10AM 5 with my dad which got out late maybe 11, and then I walked back

11:10AM 6 past where I had left the van at Kama'aina Termite and so I saw

11:10AM 7 my van again.

11:10AM 8 Q When you saw your van that evening the day you dropped it

11:10AM 9 off, did it appear to be encapsulated or tented?

11:10AM 10 A No. It was in the same place where I left it.

11:10AM 11 Q Okay. Nothing covering it?

11:10AM 12 A Yeah, nothing covering it. It was just sitting there.

11:10AM 13 Q The next morning, did you see your van again?

11:10AM 14 A Yes.

11:10AM 15 Q About what time?

11:10AM 16 A Maybe 5 in the morning. I went to the gym and then that

11:10AM 17 happens to be -- there's a UFC gym which is close or it's in

11:10AM 18 proximity to Kama'aina. And I don't know why, I just drove by

11:10AM 19 and I saw my van again.

11:10AM 20 Q And what was the condition at that time?

11:10AM 21 A It was in the same location just sitting there.

11:10AM 22 Q Was it tented at that time?

11:10AM 23 A No.

11:10AM 24 Q Did it -- what was your understanding of how long it

11:11AM 25 should be tented for?

11:11AM 1 A I did some research and I think that I found that it
11:11AM 2 needed -- anything needs to be tented I think for approximately
11:11AM 3 24 hours. And then after the tent's removed, there needs to be
11:11AM 4 some period of time that's -- that needs to elapse just to
11:11AM 5 allow all of those gases to exit like the -- the enclosure just
11:11AM 6 so that it's safe.

11:11AM 7 Q At this point, did it bother you that the tenting had not
11:11AM 8 commenced yet?

11:11AM 9 A Not really.

11:11AM 10 Q You weren't in a particular rush at that time?

11:11AM 11 A No, not at all.

11:11AM 12 Q When's the next you heard about your van?

11:11AM 13 A So that was 5 in the morning I saw it. After the gym, I
11:11AM 14 went back to Hawaii Kai. That's where I was and maybe like I
11:11AM 15 think about 9. It was pretty early. I think I received a
11:11AM 16 phone call around that time and they said your -- your vehicle
11:11AM 17 has been fumigated and it's done.

11:11AM 18 Q And just to be clear, where did this call come from?

11:11AM 19 A Kama'aina Termite.

11:11AM 20 Q And how did you react when they told you that it's done?

11:12AM 21 A Well, I was surprised and I also didn't believe them. And
11:12AM 22 I wasn't exactly sure, so --

11:12AM 23 Q Okay. So what did you do?

11:12AM 24 A I asked a series of questions. I said, "I had seen the
11:12AM 25 car. I don't really think that it's possible that you guys

11:12AM 1 could have fumigated it between 5 and 9. And if you did, you
11:12AM 2 didn't leave it in the tent long enough, so what's happening?"

11:12AM 3 And the person I was speaking with wasn't really
11:12AM 4 familiar I don't think with the different ways of treating a
11:12AM 5 vehicle for -- for an insect infestation. So they followed up
11:12AM 6 with a manager I believe and they said, let me contact you back
11:12AM 7 and figure out what's happening.

11:12AM 8 Q Did you speak with a manager later on?

11:12AM 9 A Yeah, I spoke to a manager. And then that manager, they
11:12AM 10 said that they had sprayed it with the insecticide that I asked
11:12AM 11 them not to use instead of fumigating it. And that's why it
11:13AM 12 was done because it would take maybe like, I don't know, a
11:13AM 13 minute or -- not a couple of minutes. I have no idea how long
11:13AM 14 it takes but it doesn't take that long.

11:13AM 15 Q And you explained why you didn't want it sprayed with a
11:13AM 16 chemical. What sorts of things would you had to have done if
11:13AM 17 that was the case if it had actually been sprayed with a
11:13AM 18 chemical?

11:13AM 19 A Yeah, I mean, I hadn't thought about the consequences. I
11:13AM 20 just didn't want to have that have -- or didn't want to have
11:13AM 21 those insecticides in the vehicle. But when I discovered
11:13AM 22 that's what they had done or could have done, then I started
11:13AM 23 exploring what would need to be done to the vehicle to have it
11:13AM 24 cleaned or -- or have all those things removed so that it would
11:13AM 25 be safe for my dad or myself or anybody else to be in the

11:13AM 1 vehicle. You know.

11:13AM 2 Q And would that cost some money to get it cleaned?

11:13AM 3 A Yeah, and I have no idea how much so...

11:13AM 4 Q Did you escalate this issue?

11:13AM 5 A Yes.

11:13AM 6 Q Describe that.

11:13AM 7 A So I talked to the manager. Actually, I went down. This
11:14AM 8 is important. So when I got that phone call, I went down and
11:14AM 9 spoke to the manager, and that manager then walked me to the
11:14AM 10 car and said that he had sprayed it so it was very clear.

11:14AM 11 And then after that, I think I reached back to him and
11:14AM 12 I said, "So what are we going to do?"

11:14AM 13 He said, "I don't really know what the solution is. I
11:14AM 14 can't really do anything for you." So we're going to need
11:14AM 15 to -- I need to talk to like maybe his manager or his owner.

11:14AM 16 Q And did you eventually speak to the owner?

11:14AM 17 A Yes.

11:14AM 18 Q Was that in person or over the phone initially?

11:14AM 19 A No. Over the phone.

11:14AM 20 Q And who was that person that you spoke with?

11:14AM 21 A That was Mike Miske.

11:14AM 22 Q How did this first conversation with him go?

11:14AM 23 A Well, I think I discussed like what I wanted and what had
11:14AM 24 happened, and then I was starting to already think about how I
11:14AM 25 was going to treat the vehicle or clean the vehicle out.

11:14AM 1 So I said, "Hey, your manager told me he sprayed it.
11:14AM 2 You guys didn't do what I asked and now I'm probably going to
11:14AM 3 have to clean the car. It's not a very expensive car. It's
11:15AM 4 kind of an old car but, I mean, maybe it might cost a couple
11:15AM 5 hundred dollars. I -- I just don't know. But once I figure
11:15AM 6 out what you guys used, what chemicals, I think it's your
11:15AM 7 responsibility to cover the cleaning fees."
11:15AM 8 Q And did Mr. Miske agree to that?
11:15AM 9 A No. He said, "The services -- it was the wrong service.
11:15AM 10 It was sprayed, and just come pick up your car and get out of
11:15AM 11 here. Like I'm not going to charge you for it."
11:15AM 12 Q Did you ask for some confirmation of what type of chemical
11:15AM 13 was used on your van?
11:15AM 14 A Yes.
11:15AM 15 Q And initially did you get a response on that?
11:15AM 16 A Well, yeah, okay. So, yes. So during that -- that phone
11:15AM 17 call with him, he said -- at the very end, he said, "Let me
11:15AM 18 call you back."
11:15AM 19 Q And when he said, "Let me call you back," what was -- what
11:15AM 20 part of the conversation was that referencing?
11:15AM 21 A Yeah, yeah, yeah, yeah. I just got to remember. It's
11:15AM 22 been such a long time ago. So he said, "Yeah, just come pick
11:16AM 23 up your van. I'm not going to clean it. You know, let me call
11:16AM 24 you back in a minute."
11:16AM 25 And then he called me back and then he said, "You know

11:16AM 1 what, actually, it was not sprayed. It was fumigated."

11:16AM 2 Q So --

11:16AM 3 A And then -- okay.

11:16AM 4 Q So is that different from what you previously been told?

11:16AM 5 A That is correct.

11:16AM 6 Q I'm sorry I cut you off. What were you about to say?

11:16AM 7 A And then I requested -- when I heard this, I -- I then was
11:16AM 8 so suspicious that maybe this company is lying to me. I said,
11:16AM 9 "Can you write a letter, like an official letter, stating what
11:16AM 10 you have done to my van and what you haven't done? Because I'm
11:16AM 11 getting mixed information right now from your manager and now
11:16AM 12 from you."

11:16AM 13 Q And eventually, did you get a written letter from Michael
11:16AM 14 Miske?

11:16AM 15 A Yes.

11:16AM 16 Q And how was that letter provided to you?

11:16AM 17 A Via email.

11:16AM 18 MR. INCIONG: If we could show the witness only
11:16AM 19 Exhibit 1-1110 from the government's 12th supplemental?

11:17AM 20 THE COURT: Go ahead.

11:17AM 21 MR. AKINA: If we could go to the second page and back
11:17AM 22 to the first. And then if we could also show Exhibit 1-1111
11:17AM 23 also from the 12th supplemental?

11:17AM 24 THE COURT: Yes.

11:17AM 25 By MR. AKINA:

11:17AM 1 Q These two exhibits, do you recognize them?

11:17AM 2 A Yes.

11:17AM 3 Q The first one, 1-1110, what is that?

11:17AM 4 A This is the letter that -- that I had requested or part of
11:17AM 5 the letter I requested. Letting me know that he used the
11:17AM 6 Vikane gas.

11:17AM 7 Q And to be -- I meant 1-1110 which is now in front of you,
11:17AM 8 what is that exhibit?

11:17AM 9 A Oh, okay. So this is an email I got from I believe the
11:17AM 10 manager with the attachment of the letter.

11:18AM 11 Q And is the next Exhibit 1-1111 the attachment?

11:18AM 12 A That's correct.

11:18AM 13 MR. AKINA: At this time, I'd offer 1-1110 and 1-1111
11:18AM 14 into evidence.

11:18AM 15 THE COURT: Any objection, Counsel?

11:18AM 16 MS. PANAGAKOS: No objection.

11:18AM 17 THE COURT: Without objection those two exhibits are
11:18AM 18 admitted 1-1110 and 1-1111. You may publish.

11:18AM 19 (Exhibit 1-1110 and 1-1111 were received in evidence.)

11:18AM 20 MR. AKINA: Thank you, Your Honor.

11:18AM 21 If we could publish 1-1110 and zoom in on the date and
11:18AM 22 the body of the letter -- email I mean.

11:18AM 23 BY MR. AKINA:

11:18AM 24 Q Okay. So this is dated June 3, 2015, correct?

11:18AM 25 A Yes.

11:18AM 1 Q So that's a few days after you dropped it off from

11:18AM 2 May 25th?

11:18AM 3 A Yes, correct.

11:18AM 4 Q And here this is Kama'aina telling you here's the

11:18AM 5 clearance letter?

11:18AM 6 A That's correct.

11:18AM 7 Q Okay. And if we go to the next Exhibit 1-1111, this is

11:19AM 8 that attachment to that email?

11:19AM 9 A Yes, that's correct.

11:19AM 10 Q Okay. And so if we focus on the top portion the date and

11:19AM 11 who it's dressed to. So date is June 2, 2015?

11:19AM 12 A Yes.

11:19AM 13 Q And it's addressed to you, correct?

11:19AM 14 A Yes, that's correct.

11:19AM 15 Q And it's for a blue Chevrolet van license plate PRU635?

11:19AM 16 A Yes.

11:19AM 17 Q And if we scroll down to the body of this letter. Looking

11:19AM 18 at the bottom, who is it signed by?

11:19AM 19 A Mike Miske.

11:19AM 20 Q And does this letter essentially tell you that on May 26,

11:19AM 21 2015, Kama'aina had fumigated your van with Vikane?

11:19AM 22 A Yes.

11:19AM 23 Q Did that address your concerns?

11:19AM 24 A Not -- no, because it was -- it gave me some information.

11:19AM 25 I mean, it's confirming what he says that he's done but it also

11:19AM 1 excluded the information I had asked which was that he states
11:20AM 2 that he didn't use a sprayed insecticide. Because that's --
11:20AM 3 there's a question of whether or not that he used that or not
11:20AM 4 because of his manager.

11:20AM 5 Q And referencing -- it describes a particular vehicle.

11:20AM 6 MR. AKINA: If we could show the witness 1-449 from
11:20AM 7 the original list?

11:20AM 8 THE COURT: Go ahead.

11:20AM 9 By MR. AKINA:

11:20AM 10 Q What is this a picture of?

11:20AM 11 A My old junky van.

11:20AM 12 Q And with that license plate PRU653 (sic)?

11:20AM 13 A Yes, yes, that's my van.

11:20AM 14 MR. AKINA: I'd offer this into evidence.

11:20AM 15 THE COURT: Any objection?

11:20AM 16 MS. PANAGAKOS: No objection, Your Honor.

11:20AM 17 THE COURT: 1-449 is admitted without objection. You
11:20AM 18 may publish.

11:20AM 19 (Exhibit 1-449 was received in evidence.)

11:20AM 20 BY MR. AKINA:

11:20AM 21 Q If we could focus on the van. That's your blue Chevrolet
11:20AM 22 with the license plate number, correct?

11:20AM 23 A Yes.

11:20AM 24 Q All right. So after you got that letter, that first
11:21AM 25 letter from Michael Miske, did you respond by email?

11:21AM 1 A Yeah, I believe so and I may have also called them over
11:21AM 2 the phone as well.

11:21AM 3 MR. AKINA: So if we could show the witness
11:21AM 4 Exhibit 1-447 from the original list?

11:21AM 5 BY MR. AKINA:

11:21AM 6 Q Is this one of your responses to that first letter?

11:21AM 7 A Yes, I remember this, yes.

11:21AM 8 MR. AKINA: If we could go to the second page, okay,
11:21AM 9 and back for the first.

11:21AM 10 I offer 1-447 into evidence.

11:21AM 11 THE COURT: Any objection?

11:21AM 12 MS. PANAGAKOS: No objection.

11:21AM 13 THE COURT: 1-447 is admitted without objection. You
11:21AM 14 may publish.

11:21AM 15 (Exhibit 1-447 was received in evidence.)

11:21AM 16 BY MR. AKINA:

11:21AM 17 Q If we could focus on just from forwarded message down to
11:21AM 18 the body of that. So the first email you got was on June 3rd.
11:22AM 19 This is dated June 4th, so this is the next day?

11:22AM 20 A Yeah, after the letter.

11:22AM 21 Q Okay. And what did you tell them?

11:22AM 22 A In this I'm asking him to -- well, I'm asking whoever to
11:22AM 23 forward this to Mike and to have him address my concerns that
11:22AM 24 weren't addressed in the previous letter.

11:22AM 25 Q And that's whether or not insecticides other than Vikane

11:22AM 1 gas had been used to the van, correct?

11:22AM 2 A Yes. So I'm asking for an additional letter. I'm

11:22AM 3 saying -- I'm asking him to send me another letter but include

11:22AM 4 that it was treated with the fumigant if that's what you say

11:22AM 5 you've done and then also include that you didn't use the

11:22AM 6 insecticide -- the sprayed insecticide.

11:22AM 7 MR. AKINA: If we could go and show the witness 1-448.

11:22AM 8 BY MR. AKINA:

11:22AM 9 Q And did you have to follow up with Kama'aina Termite to

11:22AM 10 get a response?

11:22AM 11 A Yes.

11:22AM 12 Q Is this one of those follow-up emails?

11:23AM 13 A Yes, this is correct.

11:23AM 14 MR. AKINA: I'd offer 1-448 into evidence.

11:23AM 15 MS. PANAGAKOS: No objection.

11:23AM 16 THE COURT: 1-448 then is admitted without objection.

11:23AM 17 Thank you, Ms. Panagakos.

11:23AM 18 You may publish.

11:23AM 19 (Exhibit 1-448 was received in evidence.)

11:23AM 20 BY MR. AKINA:

11:23AM 21 Q If we could zoom in on the body. This is a few days later

11:23AM 22 on June 8th. Is this a follow-up email that you sent to

11:23AM 23 Kama'aina?

11:23AM 24 A Yes.

11:23AM 25 Q And so up to this point, you hadn't gotten a clarification

11:23AM 1 I take it?

11:23AM 2 A Yeah, I think that's why I sent this, just to get them
11:23AM 3 moving.

11:23AM 4 Q Ultimately, did you get a second letter from Kama'aina
11:23AM 5 signed by Michael Miske?

11:23AM 6 A Yes.

11:23AM 7 MR. AKINA: And if we could show the witness
11:23AM 8 Exhibit 1-450 first?

11:23AM 9 BY MR. AKINA:

11:23AM 10 Q Okay. Is this that email?

11:23AM 11 A Yes.

11:24AM 12 Q And if we go to 1-451, is this that second letter?

11:24AM 13 A Yes.

11:24AM 14 Q Okay. Was this second letter attached to that email you
11:24AM 15 got?

11:24AM 16 A Yes.

11:24AM 17 Q And the email is dated -- if we go back to 1-450, it's
11:24AM 18 dated June 10, 2015?

11:24AM 19 A Correct.

11:24AM 20 MR. AKINA: I'd offer 1-450 and 1-451 into evidence.

11:24AM 21 THE COURT: Any objection?

11:24AM 22 MS. PANAGAKOS: No objection.

11:24AM 23 THE COURT: Those two exhibits then are admitted
11:24AM 24 without objection. That's 1-450 and 451. Thank you. You may
11:24AM 25 publish.

11:24AM 1 (Exhibit 1-450 and 1-451 were received in evidence.)

11:24AM 2 BY MR. AKINA:

11:24AM 3 Q And if we could focus on the date and the body. So this
11:24AM 4 is a June 10th email that you get, right?

11:24AM 5 A That's correct.

11:24AM 6 Q And it references another clearance letter. So if we
11:24AM 7 could go to Exhibit 4 -- 1-451. Was this that letter that was
11:25AM 8 attached to the email?

11:25AM 9 A That's correct.

11:25AM 10 Q Okay. So this is dated June 9th, the day before, right?

11:25AM 11 A Yeah. So he must have written it a day prior to the
11:25AM 12 email.

11:25AM 13 Q And if we could focus on the body and the signature. It's
11:25AM 14 signed by Michael Miske?

11:25AM 15 A That's correct.

11:25AM 16 Q And did this second letter address your initial concern
11:25AM 17 about whether or not anything else besides Vikane had been
11:25AM 18 used?

11:25AM 19 A No. It was just this is just like more information about
11:25AM 20 the treatment of a vehicle with a fumigant, so he just
11:25AM 21 completely ignored the request. In fact, I had spoken to him
11:25AM 22 prior to this -- this letter because I'm trying to get this
11:25AM 23 letter which this isn't the letter that had the information
11:25AM 24 that I wanted. I reached out to I think their employees and I
11:25AM 25 explained trying to push them to give me this letter. I had

11:26AM 1 said, "Maybe I need to do an investigation or, you know,
11:26AM 2 contact the EPA."

11:26AM 3 And then when I called them, I had spoke to Mike
11:26AM 4 again. And during that conversation, I think I had said, You
11:26AM 5 need to give me this letter with the information that I'm
11:26AM 6 requesting or I -- I don't know what else to do other than I
11:26AM 7 have to -- I have to figure out -- I'm going to have to figure
11:26AM 8 out what this is. I don't even know how I'm going to do that
11:26AM 9 yet but -- so why don't you send me the letter and -- so I can
11:26AM 10 avoid this problem?

11:26AM 11 And then he said, "Okay."

11:26AM 12 And then this is the letter I got.

11:26AM 13 Q Okay. And then after you got this letter, did you -- what
11:26AM 14 did you do after?

11:26AM 15 A I -- then I reached back out them -- out to them again,
11:26AM 16 and I tell them, "Okay, well, you know, I'm -- you're just
11:26AM 17 not -- you're not cooperating. You're not giving the
11:26AM 18 information and honestly I feel like you guys aren't being
11:26AM 19 honest right now at this point. You're being evasive. You're
11:26AM 20 giving me letters that like aren't stating what we agreed upon
11:26AM 21 over the phone." So --

11:27AM 22 Q And did you get a call from Michael Miske that same day,
11:27AM 23 June 10th about?

11:27AM 24 A Yes.

11:27AM 25 Q And describe that conversation.

11:27AM 1 A So I think, yeah, maybe after I spoke to one of their --
11:27AM 2 the employees about this letter not having the information and
11:27AM 3 then kind of continuing down that path of letting them know
11:27AM 4 that I might have to contact the EPA. He called me and reached
11:27AM 5 out to me. And...

11:27AM 6 Q How would you characterize that call?

11:27AM 7 A Insanity. Like just crazy nonsense.

11:27AM 8 Q Were there any threats involved in that call?

11:27AM 9 A Yeah, it was a surprising. The guy, he changed from being
11:27AM 10 somewhat professional a little bit being evasive and hard to
11:27AM 11 work with to suddenly threatening me, insinuating that I was
11:27AM 12 involved in like a crime that had been committed in Hawaii
11:27AM 13 based on the description of my vehicle.

11:27AM 14 Q Did he threaten to contact, to turn you in based on that
11:27AM 15 insinuation?

11:27AM 16 A Yeah, that he was connected to some authorities and that,
11:28AM 17 you know, he could make my life really complicated.

11:28AM 18 And I was, like, this is such a surprise. This was
11:28AM 19 like the first thing that he's saying when he calls me. I'm
11:28AM 20 like, Okay, hey dude, this is like way like outside of the
11:28AM 21 scope. I can't even -- I -- I really wasn't prepared for these
11:28AM 22 kinds of like accusations and threats. So yeah, that was --
11:28AM 23 that was strange.

11:28AM 24 And I said, "Hey, why don't you just calm down? All
11:28AM 25 I'm asking for is this information."

11:28AM 1 And he said, "You know what, you're not from Hawaii.
11:28AM 2 You don't know how things work here. You can just disappear
11:28AM 3 like that."
11:28AM 4 And I'm, like, "Wait, wait. Now, I'm going to
11:28AM 5 disappear over my van, like in this insecticide, like 300 bucks
11:28AM 6 and an old van? Like, it sounds like you're threatening me."
11:28AM 7 Q Did he mention your skin color or reference it?
11:28AM 8 A Yeah, yeah. He said, like, you know, "You're from the
11:28AM 9 mainland. You're a haole. You don't know what it's like here,
11:28AM 10 brah. Like, you know, you can just disappear."
11:28AM 11 I'm, like, "I'm going to disappear over my van? I'm
11:28AM 12 like, Dude, I think you're like -- you're losing it a little
11:28AM 13 bit. But, I mean, if you're serious about this, you know what,
11:28AM 14 maybe I should just head down to Kama'aina and I'll just call
11:29AM 15 the police and we'll just, like, I can show up and we can all
11:29AM 16 just discuss this. Because I don't like this open threat,
11:29AM 17 these threats that you're making over the phone over this van.
11:29AM 18 And you sound pretty serious about it and these accusations
11:29AM 19 of -- like insinuating though a part of a crime and you're
11:29AM 20 connected to something, whatever, and you're going to get me
11:29AM 21 involved in some nonsense. I'm like, I'm -- it's a little too
11:29AM 22 much."
11:29AM 23 Q And on that note about being kind of connected, did he
11:29AM 24 mention that he could make your life really miserable?
11:29AM 25 A Yes, that's correct, yeah.

11:29AM 1 Q Did he tell you to come get your van at any point?

11:29AM 2 A Oh, yeah, yeah. During that conversation, so as he's
11:29AM 3 saying these things, I said, "You know, I'm going to come
11:29AM 4 down."

11:29AM 5 And he's, like, "Yeah, come down." And then he -- I
11:29AM 6 think he said other things like, you know, come down. And I'm
11:29AM 7 also just -- sorry.

11:29AM 8 THE COURT REPORTER: Can you slow down?

11:29AM 9 THE WITNESS: Sorry. I speak really fast.

11:29AM 10 He said, "Come down. I'll beat your ass." Like, you
11:29AM 11 know, "Just get down here, get your van." Like, "Come down
11:29AM 12 right now." And I agreed.

11:29AM 13 BY MR. AKINA:

11:29AM 14 Q So he threatened -- so he threatened to beat you up?

11:29AM 15 A Yeah.

11:29AM 16 Q During this conversation, did you mention the EPA to
11:30AM 17 Michael Miske?

11:30AM 18 A I -- maybe. No, I don't -- I don't know if it was in
11:30AM 19 the -- in that conversation. It may -- it may have been in --
11:30AM 20 in like the beginning or something but, like, he was starting
11:30AM 21 off with the allegations right away like being upset with me.
11:30AM 22 Like, Why are you telling my employees that you're going to,
11:30AM 23 you know, contact the EPA?

11:30AM 24 Because the first conversation I had with him, I said,
11:30AM 25 "Maybe I need to do an investigation." I don't know what I

11:30AM 1 need to do. And then thinking about that more, I thought maybe
11:30AM 2 the EPA would be the -- the organization that I should call.
11:30AM 3 Q So after this phone call --
11:30AM 4 MR. AKINA: We can take this exhibit down.
11:30AM 5 BY MR. AKINA:
11:30AM 6 Q -- did you contact the police?
11:30AM 7 A Yes.
11:30AM 8 Q For what purpose?
11:30AM 9 A So right after the phone call, I called HPD, and I let
11:30AM 10 them know what had just happened. I said, "I feel like I just
11:30AM 11 got threatened over my vehicle," and I explained the -- the
11:30AM 12 story. I said, "I think I need to go down there and address
11:30AM 13 this. So can you send some officers down there because I
11:30AM 14 don't -- he sounds pretty serious over this." Like, I don't
11:31AM 15 know, but the tone of his voice, it didn't sound like an empty
11:31AM 16 threat.
11:31AM 17 So I asked them to come down and meet me at Kama'aina
11:31AM 18 so we could address the situation.
11:31AM 19 Q Did you go down to Kama'aina Termite later that day?
11:31AM 20 A Yes.
11:31AM 21 Q And when you got there, did you see any police there?
11:31AM 22 A Yeah, the police were already there so there were already
11:31AM 23 squad cars outside of Kama'aina Termite.
11:31AM 24 Q And what did you observe about the police that were there?
11:31AM 25 A Yeah. So when I get there, like I said, there are cop

11:31AM 1 cars outside and so I'm thinking this is great. You know, we
11:31AM 2 can -- we can get to the bottom of this.

11:31AM 3 And Kama'aina has like a -- like a hangar, sorry. It
11:31AM 4 was like a hangar and I walked past this little hangar kind of
11:31AM 5 getting oriented. I didn't really know like where I was going
11:31AM 6 to go or approach or where the officers may have been. And as
11:31AM 7 I walk by the hangar, I'm on the street, and then deep within
11:31AM 8 the building, I see officers standing and high-fiving and kind
11:32AM 9 of like getting along with somebody. And I didn't know who
11:32AM 10 that was, I mean, at that time but it's Mike Miske.

11:32AM 11 Q And do -- would you recognize him if you saw Mike Miske
11:32AM 12 again today?

11:32AM 13 A Yeah, I think so.

11:32AM 14 Q Do you see him here in the courtroom?

11:32AM 15 A Yeah, over there in the white jacket.

11:32AM 16 MR. AKINA: Let the record reflect the witness has
11:32AM 17 identified the defendant.

11:32AM 18 THE COURT: Yes, the record should reflect the
11:32AM 19 witness, Mr. Miller's, identification of the defendant,
11:32AM 20 Mr. Miske.

11:32AM 21 BY MR. AKINA:

11:32AM 22 Q So you see Mike Miske high-fiving with the police officer
11:32AM 23 and what do you do?

11:32AM 24 A So, yeah, when I see it, I just like -- I see it quickly.
11:32AM 25 I see this kind of this interaction they're getting along. I

11:32AM 1 think maybe aborting. I don't know. I just really didn't feel
11:32AM 2 comfortable. I've never seen officers interact with somebody
11:32AM 3 like that like friends. But the moment I -- I peeked -- peeked
11:32AM 4 around the corner, they -- they had seen me, too.

11:32AM 5 So the officer called me back, he said, "Hey, you.
11:33AM 6 You're the guy with the van? Come back here."

11:33AM 7 So I had to walk all the way down to the corridor to
11:33AM 8 where they were.

11:33AM 9 Q Did you enter the building?

11:33AM 10 A Well, I mean, it's -- like I said, it's a hangar so, yeah,
11:33AM 11 I'm on the property now like deep inside of their -- their
11:33AM 12 hangar.

11:33AM 13 Q And what happened after you entered?

11:33AM 14 A The officer says, "What's going on?" He kind of starts
11:33AM 15 kind of asking me.

11:33AM 16 And then I begin to tell him why I'm there, and he
11:33AM 17 just cuts me off, and he says, "No, wait. Why are you giving
11:33AM 18 this business man a hard time?"

11:33AM 19 And I said, "Well" --

11:33AM 20 "No, no, no, no, well. No nothing. He -- he treated
11:33AM 21 your car, right?"

11:33AM 22 I'm like, "Yeah, but" --

11:33AM 23 "No, no, but. So he did everything that he was
11:33AM 24 supposed to do. Why you giving this -- this business man a
11:33AM 25 hard time?"

11:33AM 1 And I said, "Okay." You know what, clearly this guy
11:33AM 2 doesn't want to listen to my explanation. And I already felt
11:33AM 3 uncomfortable, so I said, "Okay."

11:33AM 4 He says, "So get your car and get out of here."

11:33AM 5 Q What did you do?

11:34AM 6 A I just -- I turned around and started walking away.

11:34AM 7 Q Did that get that police officer's name?

11:34AM 8 A No.

11:34AM 9 Q What happened as you walked away?

11:34AM 10 A Maybe about three quarters of the way, I kind of was like
11:34AM 11 that's so messed up like I just didn't feel good so I kind of
11:34AM 12 looked -- looked behind me with a kind of smirk maybe just like
11:34AM 13 what. And the officer was like, "Don't turn around again."

11:34AM 14 Like, with this like authority, like, if you turn
11:34AM 15 around, it feels like I -- I might get shot. Like, do not turn
11:34AM 16 around again. Keep going. Get your van.

11:34AM 17 I was like, "Okay." Well, that's -- that's it. So I
11:34AM 18 just left.

11:34AM 19 Q Can you describe the tone that the officer used?

11:34AM 20 A Yeah, very threatening like -- like on top of it, like I
11:34AM 21 said, like almost like an execution style like voice. Do not
11:34AM 22 turn around. Get your van, and like whoa.

11:34AM 23 Q Do you think that had -- that interaction had anything to
11:35AM 24 do with when the defendant mentioned that he was kind of
11:35AM 25 connected?

11:35AM 1 A I don't think I thought about it too much but I mean
11:35AM 2 afterwards, yes. And then --
11:35AM 3 Q Ultimately, did you take your van away from Kama'aina?
11:35AM 4 A Correct, yes.
11:35AM 5 Q And did you end up trying to speak to the EPA?
11:35AM 6 A Yes.
11:35AM 7 Q And was that to figure out what type of chemical was
11:35AM 8 actually used, if any?
11:35AM 9 A Yeah, it was like definitely -- I was -- well, I was
11:35AM 10 shaken up over the entire situation. And then when I left, I
11:35AM 11 don't know how relevant this is, but when I left immediately --
11:35AM 12 well, go ahead.
11:35AM 13 Q Yeah, let me jump in right here.
11:35AM 14 A Okay.
11:35AM 15 Q Focusing on the EPA, ultimately did you speak to someone
11:35AM 16 from some government agency?
11:35AM 17 A Yes.
11:35AM 18 Q And what agency was that?
11:35AM 19 A I think it was -- I -- I got handed off to the
11:36AM 20 agricultural department.
11:36AM 21 Q The -- the Hawaii State Department of Agriculture?
11:36AM 22 A Yeah, yeah, yeah.
11:36AM 23 Q And do you remember the name of that person?
11:36AM 24 A I'd have to see it to remember it.
11:36AM 25 MR. AKINA: If we could show the witness

11:36AM 1 Exhibit 1-1112 from the government's 12th supplemental?

11:36AM 2 THE COURT: Go ahead.

11:36AM 3 By MR. AKINA:

11:36AM 4 Q Does this refresh your recollection of who you spoke with?

11:36AM 5 A Yeah, I -- I remember him, and, yeah, it looks like his
11:36AM 6 name is Steve Ogata.

11:36AM 7 MR. AKINA: You can take this down.

11:36AM 8 THE WITNESS: Or Steven Ogata.

11:36AM 9 BY MR. AKINA:

11:36AM 10 Q So you spoke to Steven Ogata from the Hawaii Department of
11:36AM 11 Agriculture?

11:36AM 12 A Yeah, that's correct.

11:36AM 13 Q And ultimately, did you ever find out what was used on
11:36AM 14 your van, if anything?

11:36AM 15 A No. I -- I contacted them. I had a conversation with
11:36AM 16 them about this in person and he kind of let me know that he
11:37AM 17 was like kind of familiar with.

11:37AM 18 Q And without going into conversation --

11:37AM 19 A I'm sorry. Yes.

11:37AM 20 Q -- that you had with third parties, just ultimately did
11:37AM 21 you find out what was used on your van, if anything?

11:37AM 22 A He said that he would swab it, but he didn't know whether
11:37AM 23 or not he could definitely let me know what had been used on
11:37AM 24 the vehicle.

11:37AM 25 Q So you never found out?

11:37AM 1 A Yeah.

11:37AM 2 MR. AKINA: No other questions at this time.

11:37AM 3 THE COURT: Ms. Panagakos, when you're ready.

11:37AM 4 CROSS-EXAMINATION

11:37AM 5 BY MS. PANAGAKOS:

11:37AM 6 Q Hello, Mr. Miller.

11:37AM 7 A Hello.

11:37AM 8 Q So when you went to Kama'aina Termite after you called the
11:38AM 9 police, you encountered Mr. Miske and the police officers?

11:38AM 10 A Yes.

11:38AM 11 Q And is that the first time you met Mr. Miske in person?

11:38AM 12 A Yes.

11:38AM 13 Q So Mr. Miske had not seen you prior to speaking you --
11:38AM 14 speaking with you on the telephone according to your testimony?

11:38AM 15 A I'm assuming that, yeah.

11:38AM 16 Q But yet you say he called you a fucking haole?

11:38AM 17 A That's correct.

11:38AM 18 Q Not having seen you?

11:38AM 19 A That's correct.

11:38AM 20 Q And the person that you spoke with at -- that you met with
11:38AM 21 at -- at Kama'aina Termite who you believe was the manager, do
11:38AM 22 you remember his name?

11:38AM 23 A No.

11:38AM 24 Q Do you remember what he looked like?

11:38AM 25 A Vaguely. I feel like he was a little heavyssetish maybe

11:39AM 1 possibly.

11:39AM 2 Q Haole?

11:39AM 3 A I don't believe so.

11:39AM 4 Q So you recall testifying in the grand jury about four
11:39AM 5 years ago, right?

11:39AM 6 A Yeah.

11:39AM 7 Q And you recall speaking with the FBI a number of times,
11:39AM 8 right?

11:39AM 9 A Correct.

11:39AM 10 Q And with the prosecutors to get ready for your testimony
11:39AM 11 today?

11:39AM 12 A Correct.

11:39AM 13 Q And in the grand jury, you discussed your employment. You
11:39AM 14 said you had been -- you were a magician, right?

11:39AM 15 A Correct.

11:39AM 16 Q And you made miniature model surfboards?

11:39AM 17 A Um-hm.

11:39AM 18 Q You didn't say anything about a juice bar at that time?

11:39AM 19 MR. AKINA: Objection, improper impeachment,
11:39AM 20 relevance.

11:39AM 21 THE COURT: Overruled. Go ahead.

11:39AM 22 THE WITNESS: Okay to answer it?

11:40AM 23 THE COURT: Yes, please.

11:40AM 24 THE WITNESS: Okay. Yeah, yeah, I -- maybe at that
11:40AM 25 time. Like I said, I do a lot of -- a lot of things, like I

11:40AM 1 was an entrepreneur so I was in and out of a juice bar that I
11:40AM 2 had started. But at that time maybe when I was testifying
11:40AM 3 during that period I may not have been actively working on it,
11:40AM 4 so maybe it was just something that I had done. I had a juice
11:40AM 5 bar. I had partners. I had left. I had come back so -- I
11:40AM 6 don't know how it's relevant.

11:40AM 7 By MS. PANAGAKOS:

11:40AM 8 Q You never worked in the fumigation industry?

11:40AM 9 A No.

11:40AM 10 Q And yet you seemed to think you know more than the manager
11:40AM 11 at Kama'aina Termite about pesticides?

11:40AM 12 A Why do you say that?

11:40AM 13 Q You testified that he didn't seem to know what he was
11:40AM 14 talking about?

11:40AM 15 A What do you mean?

11:40AM 16 Q I thought I heard you testify on direct that the manager
11:40AM 17 didn't seem knowledgeable about the process of fumigating your
11:40AM 18 van?

11:40AM 19 A I don't think I said that. I think I said that he wasn't
11:40AM 20 sure how I should clean it. And I -- and then he told me he
11:41AM 21 sprayed it. He didn't know what should be done to remediate
11:41AM 22 that problem if I wanted it cleaned.

11:41AM 23 Q And you testified that in order to fumigate a van it has
11:41AM 24 to be tented for 24 hours?

11:41AM 25 A That's the information that I found online.

11:41AM 1 Q You were provided a Vikane fact sheet by Kama'aina

11:41AM 2 Termite, correct?

11:41AM 3 A Correct.

11:41AM 4 MS. PANAGAKOS: And I'd like to show -- publish 1-40

11:41AM 5 which has been admitted just during the direct testimony. I --

11:42AM 6 I'm sorry. I misspoke. 1-450.

11:42AM 7 THE COURT: Go ahead.

11:42AM 8 BY MS. PANAGAKOS:

11:42AM 9 Q And you testified that this is an email you received from

11:42AM 10 Kama'aina Termite on June 10th, correct?

11:42AM 11 A Yes.

11:42AM 12 Q And in addition to the clearance letter, this email also

11:42AM 13 attached a Vikane fact sheet, correct?

11:42AM 14 A That's what it says.

11:42AM 15 MS. PANAGAKOS: And I'd like to show Mr. Miller now

11:42AM 16 Exhibit 9115-009 which is on the 27th supplemental list.

11:42AM 17 THE COURT: I'll have to take your word for it. I do

11:42AM 18 not have a 27th supplemental list. Do you have a copy? Thank

11:43AM 19 you. All right. Go ahead.

11:43AM 20 By MS. PANAGAKOS:

11:43AM 21 Q And you see this is the same email, right?

11:43AM 22 A Okay.

11:43AM 23 Q That was -- okay. And then the next page, page two is the

11:43AM 24 same June 9th letter which is also marked 1-451?

11:43AM 25 A Okay.

11:43AM 1 Q And then page three of this exhibit has the attached
11:43AM 2 Vikane fact sheet that accompanied this email and this letter,
11:43AM 3 correct?
11:43AM 4 A Okay. Correct.
11:43AM 5 MS. PANAGAKOS: So I'd move to admit 9115-009.
11:43AM 6 THE COURT: Any objection?
11:43AM 7 MR. AKINA: I just want to confirm if there's another
11:43AM 8 page to the fact sheet. Okay. No objection.
11:43AM 9 THE COURT: Okay. Without objection that exhibit is
11:44AM 10 admitted 9115-9. You may publish.
11:44AM 11 MS. PANAGAKOS: Thank you.
11:44AM 12 (Exhibit 9115-009 was received in evidence.)
11:44AM 13 MS. PANAGAKOS: And if we could highlight this
11:44AM 14 paragraph here, Ms. King.
11:44AM 15 BY MS. PANAGAKOS:
11:44AM 16 Q And this is for buildings, structures way bigger than
11:44AM 17 vans, right?
11:44AM 18 A I don't know. I haven't read this.
11:44AM 19 Q How buildings are fumigated?
11:44AM 20 A Okay.
11:44AM 21 Q And it says, "The building will remain sealed for two to
11:44AM 22 72 hours depending on the specifics of the job."
11:44AM 23 Do you see that?
11:44AM 24 A Yeah, I see that.
11:44AM 25 Q And this is the Vikane fact sheet produced by Dow

11:44AM 1 AgroSciences the manufacturer of Vikane.

11:44AM 2 MS. PANAGAKOS: Can we go scroll out to the top? Can
11:44AM 3 we show the entire page, please?

11:44AM 4 BY MS. PANAGAKOS:

11:44AM 5 Q Do you see that?

11:44AM 6 A Yeah, yeah, I see that. I'm looking at the entire
11:44AM 7 document. I just want to read the part that you had enlarged.

11:45AM 8 Q Okay.

11:45AM 9 MS. PANAGAKOS: So we can enlarge that paragraph
11:45AM 10 again, please.

11:45AM 11 BY MS. PANAGAKOS:

11:45AM 12 Q So you see at the time of the duration of sealing ranges
11:45AM 13 from two to 72 hours according to the manufacturer of Vikane?

11:45AM 14 A Yes, that's correct.

11:45AM 15 Q And tenting is not the only way to seal a structure. It
11:45AM 16 can also be done with tape and a plastic sheet, correct?

11:45AM 17 A When it's accomplishing the same thing, right.

11:45AM 18 Q Right.

11:45AM 19 A So --

11:45AM 20 Q So the fact that you didn't -- so you dropped your car
11:45AM 21 off -- your van off at 3 or 4:00 in the afternoon, right?

11:45AM 22 A Correct.

11:45AM 23 Q And then you saw it again eight or nine hours later after
11:45AM 24 the movies, right?

11:45AM 25 A Correct.

11:45AM 1 Q And so it wasn't tented at that time?

11:45AM 2 A Correct.

11:45AM 3 Q You have no idea whether it was tented for any portion of
11:46AM 4 the time between 3 or 4 and 11 or 12 when you got out of the
11:46AM 5 movies?

11:46AM 6 A I think when I dropped it off it was close to their
11:46AM 7 closing time.

11:46AM 8 Q You testified in the grand jury that you dropped it off
11:46AM 9 between 3 and 4 p.m.?

11:46AM 10 A Yeah, I feel like I don't know when -- when they stop
11:46AM 11 doing business but around that time it seems like near the end
11:46AM 12 of the day.

11:46AM 13 Q And then the movie got out around 11 or 12?

11:46AM 14 A That's correct.

11:46AM 15 Q Right? So there was a seven or eight or nine-hour period
11:46AM 16 from when you dropped it off and you saw it without a tent,
11:46AM 17 right?

11:46AM 18 A That's correct.

11:46AM 19 Q And so you have no idea whether it had been tented during
11:46AM 20 that time?

11:46AM 21 A Yeah, that's possible.

11:46AM 22 Q And then the next time you saw it was at 5 or 6 in the
11:46AM 23 morning?

11:46AM 24 A That's correct.

11:46AM 25 Q And then you had a call and it wasn't tented at that time?

11:46AM 1 A That's correct.

11:46AM 2 Q And then you had a call several hours later that it was
11:46AM 3 ready?

11:46AM 4 A Yes.

11:46AM 5 Q And you don't know whether it was tented in between the
11:46AM 6 time you saw it when you went to the gym and the time you went
11:46AM 7 back to pick it up?

11:46AM 8 A That's correct.

11:47AM 9 MS. PANAGAKOS: Okay. We can take that down.

11:47AM 10 And can we show Mr. Miller Exhibit 1-1111?

11:47AM 11 THE COURT: Yes, go ahead.

11:47AM 12 By MS. PANAGAKOS:

11:48AM 13 Q This is the first letter you received from Mr. Miske,
11:48AM 14 correct?

11:48AM 15 A Yes, correct.

11:48AM 16 Q And you spoke with him after you received this letter,
11:48AM 17 right?

11:48AM 18 A Before and after.

11:48AM 19 Q And in the phone call after this, he told you that they
11:48AM 20 did not use any other insecticides other than Vikane, right?

11:48AM 21 A Yes, that's what he said.

11:48AM 22 Q And then you asked for a second letter, correct?

11:48AM 23 A Yes.

11:48AM 24 Q And you received a second letter again saying that the
11:49AM 25 fumigant used was Vikane, right?

11:49AM 1 A Yes.

11:49AM 2 Q So he told you in writing what he used -- he told you in
11:49AM 3 writing what Kama'aina Termite had used to fumigate your van,
11:49AM 4 right?

11:49AM 5 A That's correct.

11:49AM 6 Q And he told you on the phone that no other insecticide had
11:49AM 7 been used?

11:49AM 8 A Well, he told me that he had -- that's not true. He told
11:49AM 9 me that it had been treated with insecticide sprayed and then
11:49AM 10 hold on a second. Let me call you back. Which is confirming
11:49AM 11 the information that his manager had told me because he said
11:49AM 12 that he personally had sprayed it and he didn't fumigate it.

11:49AM 13 Q So --

11:49AM 14 A So then he called me back and said, "Oh, wait, now it's
11:49AM 15 been fumigated."

11:49AM 16 Q The first letter said it had been fumigated. In the first
11:49AM 17 letter he sent you, it -- he said it had been fumigated,
11:50AM 18 correct?

11:50AM 19 A So what I just discussed was before the first letter,
11:50AM 20 the -- before the first letter, we spoke. He said, "It's been
11:50AM 21 sprayed. Wrong service. Come pick up your car. Got it?
11:50AM 22 Okay."

11:50AM 23 Q And that came from the manager or Mr. Miske?

11:50AM 24 A Mr. Miske.

11:50AM 25 Q Okay.

11:50AM 1 A Then he called back and said, "Wait. Actually, it's
11:50AM 2 been -- it was fumigated."
11:50AM 3 Q Okay. You had asked for it to be --
11:50AM 4 A I can give you the letter --
11:50AM 5 Q You had asked for it to be fumigated?
11:50AM 6 A That's correct.
11:50AM 7 Q He told you it was fumigated?
11:50AM 8 A I didn't ask for it to be fumigated again.
11:50AM 9 Q No, you asked -- you -- you -- the service you requested
11:50AM 10 was fumigation?
11:50AM 11 A That's correct.
11:50AM 12 Q And he told you that service had been rendered?
11:50AM 13 A After flip flopping.
11:50AM 14 Q And then he told you again?
11:50AM 15 A That's correct.
11:50AM 16 Q And this is a multimillion dollar business, you're aware
11:50AM 17 of that, right?
11:50AM 18 MR. AKINA: Objection to relevance.
11:50AM 19 THE COURT: Sustained.
11:50AM 20 BY MS. PANAGAKOS:
11:50AM 21 Q Others worked on the project?
11:50AM 22 A I don't know that so okay.
11:50AM 23 Q Others -- other employees handled the services that are
11:51AM 24 rendered and --
11:51AM 25 A I spoke to one of them.

11:51AM 1 Q And your claim is that the manager of the business handled
11:51AM 2 this fumigation?

11:51AM 3 A That's what he said. I said, yeah, manager. He just was
11:51AM 4 a higher authority the person I was talking to. So what his
11:51AM 5 position there is, he could be manager. I think that's what
11:51AM 6 they said. They said I'm going to have to give it to my
11:51AM 7 manager and then I spoke to that person.

11:51AM 8 Q You've testified in the grand jury that he was a manager?

11:51AM 9 A That's what I was told.

11:51AM 10 Q And so they also mentioned that there had been
11:51AM 11 miscommunication, right?

11:51AM 12 A With whom? Within the company or between --

11:51AM 13 Q Whether within the company or with you, the lady you spoke
11:52AM 14 with initially said there had been a miscommunication, right?

11:52AM 15 A She said that she needed -- I -- yeah, possibly, I don't
11:52AM 16 remember the specific language.

11:52AM 17 Q Okay. And Mr. Miske cleared it up by telling you the
11:52AM 18 service that his company rendered?

11:52AM 19 A At the very end, yes, after saying that it had been
11:52AM 20 sprayed, pick up the car, wrong service. And then after that,
11:52AM 21 yes, wait. Actually it's been treated with the fumigant.

11:52AM 22 Q And this van was a really old van, right?

11:52AM 23 A Yeah.

11:52AM 24 Q And it was in bad shape?

11:52AM 25 A I mean, I don't know. It ran but, yeah.

11:52AM 1 Q But it was worth about 500 bucks I think you said -- you

11:52AM 2 testified?

11:52AM 3 A Yeah, probably.

11:52AM 4 Q And you had left it unattended for some period of time?

11:52AM 5 A Yes.

11:52AM 6 MR. AKINA: Objection, relevance.

11:52AM 7 MS. PANAGAKOS: I'm sorry, Your Honor. I didn't hear
11:52AM 8 the ruling.

11:52AM 9 THE COURT: Let's move on.

11:52AM 10 By MS. PANAGAKOS:

11:52AM 11 Q Okay. And you had gone camping in your van?

11:53AM 12 MR. AKINA: Objection, relevance, beyond the scope.

11:53AM 13 THE COURT: Side bar.

11:53AM 14 MS. PANAGAKOS: Okay. Can we --

11:53AM 15 THE COURT: Side bar now.

11:53AM 16 (Sidebar on the record:)

11:53AM 17 THE COURT: How much time are you going to waste?

11:53AM 18 MS. PANAGAKOS: I'm moving on.

11:53AM 19 THE COURT: How much time are you going to waste?

11:53AM 20 Let's get through this or we're going to be in trial in

11:53AM 21 October.

11:53AM 22 (End of side bar.)

11:53AM 23 BY MS. PANAGAKOS:

11:53AM 24 Q So you called the police officers? You called the police
11:53AM 25 department?

11:53AM 1 A Yes.

11:53AM 2 Q And you told them you wanted to make a police report?

11:53AM 3 A Well, I don't know. I just told them that this person had

11:54AM 4 threatened me and that I needed to go down to manage the

11:54AM 5 situation if they could bring officers because I had been

11:54AM 6 threatened.

11:54AM 7 Q And when you got to Kama'aina Termite --

11:54AM 8 MS. PANAGAKOS: Let's see. Can we show Mr. Miller

11:54AM 9 Exhibit 5-22?

11:54AM 10 THE COURT: Go ahead.

11:54AM 11 BY MS. PANAGAKOS:

11:54AM 12 Q And when you arrived, where did you see -- where were the

11:54AM 13 officers?

11:54AM 14 A I believe in the -- yeah, it's the hangar, so that's the

11:54AM 15 kind of garage I was talking about. There might have been

11:55AM 16 something on the right of this. I actually can't remember if

11:55AM 17 this building might extend more to the right a little bit but

11:55AM 18 it -- or there's some vehicles but this is a long hallway and

11:55AM 19 they were down in that little -- yeah, that dark area.

11:55AM 20 Q And you saw the them -- you saw the officers high-fiving

11:55AM 21 with Mr. Miske?

11:55AM 22 A Yeah.

11:55AM 23 Q And you testified in the grand jury they were actually --

11:55AM 24 one of the officers was actually giving him a hug?

11:55AM 25 A Yeah, I mean, they were just interacting like friends. So

11:55AM 1 maybe like a close, like kind of, you know, like a homie hug.

11:55AM 2 Q And so they wouldn't take a report from you?

11:55AM 3 A No. Well, I mean they didn't even offer that.

11:55AM 4 Q And do you recall seeing another officer when you left?

11:55AM 5 A Yes.

11:55AM 6 Q And where was that?

11:56AM 7 A After I had left?

11:56AM 8 Q Yeah.

11:56AM 9 A Okay, yeah. So after that, I went across the street to --

11:56AM 10 well, actually I just -- I just left and I just walked away

11:56AM 11 from that whole situation, walked across the street where the

11:56AM 12 old Sports Authority was. And in that parking lot, there was a

11:56AM 13 squad car with an officer in it.

11:56AM 14 Q And you told that officer what had happened?

11:56AM 15 A Yeah, I -- I kind of like I -- well, it wasn't -- I

11:56AM 16 introduced him to like -- I just started -- yeah, a little bit

11:56AM 17 I started to just talk to him because I wasn't exactly sure

11:56AM 18 whether or not he had arrived with those other officers or not.

11:56AM 19 So at first I was kind of delicate as to how I brought that up.

11:56AM 20 And when I did, he opened up to me. And, yeah, he said that

11:56AM 21 I -- I didn't know who that really was. This person is Mike

11:56AM 22 Miske.

11:56AM 23 Q This officer told you according to your grand jury

11:56AM 24 testimony that he had also experienced situations where

11:57AM 25 officers showed favoritism towards locals and --

11:57AM 1 A Yeah, I think I -- yeah, that's when I -- okay, so when
11:57AM 2 I -- when I met him, I asked him if he was from Hawaii right
11:57AM 3 away and he said he wasn't. And then -- then I told him --
11:57AM 4 okay, so I felt a little more comfortable maybe because he was
11:57AM 5 from the mainland maybe he wouldn't be like as affiliated as
11:57AM 6 these guys seemed to be, so I told him the story. And then he
11:57AM 7 said, yeah. He's like, I totally understand like probably what
11:57AM 8 you just went through and you should probably like report that.
11:57AM 9 Q And he told you that -- according to your grand jury
11:57AM 10 testimony that he'd been in positions where he was unable to do
11:57AM 11 his job because of officers, local officers' connections to
11:57AM 12 local people, right?
11:57AM 13 A Yeah, he felt stifled, he said, yeah.
11:57AM 14 Q And he said you should make a report?
11:57AM 15 A Yeah, he said, you should definitely probably pursue that
11:57AM 16 if you want.
11:57AM 17 Q But yet you didn't -- he didn't take your report. He
11:57AM 18 didn't -- you couldn't file a police report with him?
11:57AM 19 A I don't even -- I think in the conversation it didn't
11:58AM 20 really come up. He didn't offer that as a solution. I
11:58AM 21 remember at that point also I just kind of had a huge
11:58AM 22 adrenaline dump from that situation, and so, you know, I wasn't
11:58AM 23 really clear minded and thinking too clearly about what I
11:58AM 24 should do next. It was just kind of just get away from that
11:58AM 25 situation.

11:58AM 1 Q And then when you talked to the department of agriculture
11:58AM 2 Mr. Ogata, he sent you an email confirming what you had
11:58AM 3 discussed with him, right?

11:58AM 4 A I don't know what email you're talking about so maybe if
11:58AM 5 you could show me then I can.

11:58AM 6 Q 1-1112 which Mr. Akina showed you but did not move to
11:58AM 7 admit.

11:59AM 8 A Okay. Yes, I remember this email.

11:59AM 9 Q And you provided this to the government, right?

11:59AM 10 A Yes.

11:59AM 11 MS. PANAGAKOS: I would move to admit 1-1112.

11:59AM 12 THE COURT: Any objection?

11:59AM 13 MR. AKINA: No objection.

11:59AM 14 THE COURT: 1-1112 is admitted without objection. You
11:59AM 15 may publish.

11:59AM 16 (Exhibit 1-1112 was received in evidence.)

11:59AM 17 BY MS. PANAGAKOS:

11:59AM 18 Q And Mr. Ogata said since we don't know if Kama'aina
11:59AM 19 Termite applied a pesticide liquid spray to your van and if
11:59AM 20 they did what pesticide, he can't tell you what you need to do
11:59AM 21 to clean it, right?

11:59AM 22 A Yes.

11:59AM 23 Q So from his perspective, it was still unknown based on
11:59AM 24 what you had reported whether a pesticide liquid spray had been
11:59AM 25 used?

11:59AM 1 A Yes.

11:59AM 2 Q And you never had any further contact with Mr. Miske?

11:59AM 3 A No.

12:00PM 4 MS. PANAGAKOS: Nothing further.

12:00PM 5 Thank you, Your Honor.

12:00PM 6 Thank you, Mr. Miller.

12:00PM 7 THE COURT: Redirect?

12:00PM 8 REDIRECT EXAMINATION

12:00PM 9 BY MR. AKINA:

12:00PM 10 Q You're not an expert in Vikane, right?

12:00PM 11 A No.

12:00PM 12 Q But you did some research?

12:00PM 13 A Yes.

12:00PM 14 Q And what happened was you were a customer trying to get
12:00PM 15 more information; is that fair to say?

12:00PM 16 A Yes.

12:00PM 17 Q And as a result of that, you got threatened?

12:00PM 18 A That's correct.

12:00PM 19 Q And the person who threatened you, Mr. Miske, prior to you
12:00PM 20 meeting him in person -- you only met him one time, right?

12:00PM 21 A That's correct.

12:00PM 22 Q Okay. But prior to that day, you had met with other
12:00PM 23 employees at Kama'aina?

12:00PM 24 A That's correct.

12:00PM 25 Q And had you -- and when you -- and you'd spoken to

12:00PM 1 Mr. Miske on the phone?

12:00PM 2 A Yes.

12:00PM 3 Q Do you speak with a local pidgin accent?

12:01PM 4 A Actually, I was just thinking about that when she had
12:01PM 5 asked that question, how would he know I was haole? That's
12:01PM 6 because probably the way I speak.

12:01PM 7 Q And your name, Laurence Miller, is that a Hawaiian name to
12:01PM 8 your knowledge?

12:01PM 9 A No.

12:01PM 10 Q You were asked some questions about an officer who you
12:01PM 11 spoke to after you left Kama'aina Termite and Pest Control?

12:01PM 12 A Yes.

12:01PM 13 Q That officer, did you tell him -- did you mention Michael
12:01PM 14 Miske to that officer?

12:01PM 15 A Yes.

12:01PM 16 Q Did that officer share things with you about his knowledge
12:01PM 17 of Michael Miske?

12:01PM 18 A Yeah, kind of a lot of stuff.

12:01PM 19 Q And without going into specifics, was it good or bad?

12:01PM 20 A Very bad.

12:01PM 21 MS. PANAGAKOS: Objection.

12:01PM 22 THE COURT: Overruled. Go ahead.

12:01PM 23 THE WITNESS: Yeah, very bad.

12:01PM 24 BY MR. AKINA:

12:01PM 25 Q And was that along the lines of him not being able to do

12:01PM 1 his job?

12:01PM 2 A That was the gist of the entire conversation.

12:01PM 3 Q And --

12:01PM 4 A He was impeded in his investigations he felt like because
12:01PM 5 of the way that things worked in Hawaii and specifically with
12:02PM 6 him like that -- that person.

12:02PM 7 MR. AKINA: No other questions.

12:02PM 8 THE COURT: Anything else?

12:02PM 9 MS. PANAGAKOS: Yes, Your Honor.

12:02PM 10 THE COURT: Go ahead.

12:02PM 11 RECROSS-EXAMINATION

12:02PM 12 BY MS. PANAGAKOS:

12:02PM 13 Q Mr. Akina asked you about the threats you say Mr. Miske
12:02PM 14 made. When you testified in the grand jury, you testified that
12:02PM 15 the first threat that you say Mr. Miske made was that he
12:02PM 16 insinuated that he was going to report you for using your van
12:02PM 17 to abduct missing children?

12:02PM 18 A That is correct.

12:02PM 19 Q And that was what you described as insanity, right?

12:02PM 20 A Yeah, I mean, it's -- I mean an allegation like that is
12:03PM 21 like pretty serious and also, you know, that's -- I don't know.
12:03PM 22 It's outside of like normal --

12:03PM 23 Q Yes, it is kind of.

12:03PM 24 A Yeah.

12:03PM 25 Q And then I'd like to show you a portion of your grand jury

12:03PM 1 testimony.

12:03PM 2 MS. PANAGAKOS: It's on the first supplemental list

12:03PM 3 seven -- it's Exhibit 7344 at page 0019. And I'd like to have

12:03PM 4 the witness read lines 18 through 25 on that page.

12:03PM 5 THE COURT: Okay. Go ahead.

12:03PM 6 MR. AKINA: Just to be clear, the witness should be

12:03PM 7 reading it to himself.

12:03PM 8 MS. PANAGAKOS: Correct, yes.

12:03PM 9 MR. AKINA: Okay.

12:03PM 10 MS. PANAGAKOS: Thank you, Mr. Akina.

12:03PM 11 Oh, wait, I'm sorry. I have the wrong page. I have

12:04PM 12 the wrong page. I meant page 27.

12:04PM 13 THE COURT: And the line numbers?

12:04PM 14 By MS. PANAGAKOS:

12:04PM 15 Q Line 13 to the bottom. And then let me know when you're

12:04PM 16 done, Mr. Miller.

12:04PM 17 A Yeah, I read it.

12:04PM 18 Q Okay. And can you just read the top half of the next page

12:05PM 19 where you continue testifying about this subject up through

12:05PM 20 line 15.

12:05PM 21 A Okay.

12:06PM 22 Q So when you describe before the grand jury your

12:06PM 23 interaction with the mainland officer and situations that that

12:06PM 24 officer described to you, he described in general his

12:06PM 25 interactions with other officers in situations having not to do

12:06PM 1 with Mr. Miske, correct?

12:06PM 2 A I have to just think about this because it's been such a
12:06PM 3 long time so I'm like rereading this for a minute, please. Can
12:06PM 4 you ask the question again, please?

12:06PM 5 Q The police officer from the mainland according to your
12:06PM 6 testimony told you that he'd had experiences where he felt his
12:06PM 7 hands were tied because of local officers connections with
12:06PM 8 local people?

12:06PM 9 A Yes.

12:06PM 10 Q And he did not in describing that make reference to any
12:07PM 11 instance with Mr. Miske?

12:07PM 12 A I don't -- yeah, I don't -- I don't believe -- I can't
12:07PM 13 recall. I don't -- I don't know. I think he had said
12:07PM 14 afterwards because he had said, "Oh, Mike Miske. Do you know
12:07PM 15 who that is?"

12:07PM 16 Like he was the one who was kind informing me because
12:07PM 17 before I didn't --

12:07PM 18 Q And that's not what's in your grand jury testimony --

12:07PM 19 MR. AKINA: Objection. That is referenced in the
12:07PM 20 testimony.

12:07PM 21 THE COURT: Overruled. Go ahead.

12:07PM 22 By MS. PANAGAKOS:

12:07PM 23 Q Your testimony about this officer's descriptions of his
12:07PM 24 hand being tied was a general description of other officers'
12:07PM 25 interactions with other local people, correct?

12:07PM 1 A Just give me a minute before -- I just want to read this
12:07PM 2 again because I -- I have to recall like what I had said here.
12:08PM 3 Honestly, I don't really how to, like, comprehend actually kind
12:08PM 4 of like the writing here. Like what this -- what question was
12:08PM 5 being asked. So --

12:08PM 6 Q All right.

12:08PM 7 A I'm sorry. I just don't really -- it's kind of like a
12:08PM 8 back and forth between me and the officer. We could be talking
12:08PM 9 slightly about Miske and then about his feelings with other
12:08PM 10 officers of the police department in general so...

12:08PM 11 MS. PANAGAKOS: All right. Thank you.

12:08PM 12 THE WITNESS: Yeah.

12:08PM 13 THE COURT: I assume you're done?

12:08PM 14 MS. PANAGAKOS: Oh, yes, Your Honor. I'm sorry.

12:08PM 15 THE COURT: All right. Mr. Miller you may step down.

12:08PM 16 Thank you, sir.

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1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, June 4, 2024.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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